

09:01:00AM

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI, ARIZONA

2011 DEC -6 PM 12:15 ✓

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR201080049

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY FIFTY

JUNE 3, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

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EXHIBITS ADMITTED

| 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
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| | | | Number | Page | | | | | | | | |
| | | | 181, 182 | 93 | | | | | | | | |
| | | | 1080 | 156 | | | | | | | | |
| | | | 441 | 219 | | | | | | | | |

1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE
 4 BY: SHEILA SULLIVAN POLK, ATTORNEY
 5 BY: BILL R. HUGHES, ATTORNEY
 255 East Gurley
 Prescott, Arizona 86301-3868

7 For the Defendant:

8 THOMAS K. KELLY, PC
 9 BY: THOMAS K. KELLY, ATTORNEY
 425 East Gurley
 Prescott, Arizona 86301-0001

10 MUNGER TOLLES & OLSON, LLP
 11 BY: LUIS LI, ATTORNEY
 12 BY: TRUC DO, ATTORNEY
 355 South Grand Avenue
 Thirty-fifth Floor
 Los Angeles, California 90071-1560

13 MUNGER TOLLES & OLSON, LLP
 14 BY: MIRIAM L. SEIFTER, ATTORNEY
 560 Mission Street
 San Francisco, California 94105-2907

1 Proceedings had before the Honorable
 2 WARREN R. DARROW, Judge, taken on Friday, June 3,
 3 2011, at Yavapai County Superior Court, Division
 4 Pro Tem B, 2840 North Commonwealth Drive,
 5 Camp Verde, Arizona, before Mina G. Hunt, Certified
 6 Reporter within and for the State of Arizona.

PROCEEDINGS

(Proceedings continued outside presence of jury.)

THE COURT: The record will show the presence of Mr. Ray, represented by Mr. Li and Mrs. Do. The state is represented by Ms. Polk and Mr. Hughes.

I have a couple of things I wanted to take up. One had to do with a record, an admission of some medical records by the state.

And, Mr. Li, I just wanted to get that on the record.

MR. LI: Yes, Your Honor. I believe the number is 520 -- 257. I believe it was admitted by mistake. With agreement of the state, we'd ask that it be de-admitted.

THE COURT: State's counsel agree?

MR. HUGHES: Yes, Your Honor.

THE COURT: 257 is stricken as an exhibit. It's not an exhibit in this matter.

The other thing I wanted to bring up had to do with a juror concern. Ms. Rybar is in the courtroom. I don't know. Two weeks ago, several weeks ago -- it was apparent this juror expressed a concern about the length of trial. I think we discussed those things in general. And Ms. Rybar

6

gave the juror the usual instruction -- is any concern, write it down. He did at this point.

My belief is that he shouldn't have anything to be concerned with. And rather than call him in and go through that, I would just say that I will make a general reference there was a letter with some concern over the date, July 13, and that it's my assessment that it would not be a concern, rather than have any separate discussion.

Ms. Polk, Mr. Hughes?

MS. POLK: I agree, Your Honor.

MR. LI: I agree, Your Honor.

THE COURT: Okay. So I'll just make a brief note when we start out without singling out that particular juror. But I will mention the particular week. It's a week I would not have been available in any event.

Anything the parties want to bring up before we begin?

MS. POLK: No, Your Honor.

THE COURT: Mr. Li?

MR. LI: No, Your Honor.

THE COURT: Thank you. We'll try to start at 9:15.

MS. POLK: I'm sorry, Your Honor. If we've

got a couple minutes. The state still has pending the issue of the three client files.

THE COURT: Yes. And looks like the defense might have got a proposed --

MR. LI: We do. And Ms. Do reminds me. Assuming that the state rests today, assuming all the briefing gets done today and by Monday at 2:00, would we set aside Tuesday to argue the motion? One of the reasons why we're trying to do this is we're coordinating the flight schedule of one of our witnesses. And so just in terms of scheduling, we just want to figure out what the Court's preference would be.

THE COURT: And there is a Rule 20. And so that makes things tentative. That's how the law works. I'm not going to prejudge something. There is always that aspect of things. It's not as if I have been ignoring the evidence as it comes in and looking, as I do in all cases, to the possibility of a Rule 20. That's usually what happens.

But with that preface, I would like to use as much time as possible, assuming the trial continues. I was concerned with the whole day on Tuesday if we're going to go on with trial. I think especially with written briefing, that would

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be more time than necessary. I would like to have at least a half day personally if that would work.

MR. LI: It's fine with us, Your Honor. We have a great deal of confidence in our brief. We're just trying to make the scheduling just out of an abundance of caution.

THE COURT: I appreciate that.

MR. LI: So if the Court's feeling is we should just spend the morning making the argument, then the arrangements would be -- what would the Court's preference be vis-a-vis arrangement?

THE COURT: I would prefer to use as much time as possible and have at least the afternoon. I would like to have the state's position on this before we go further.

MS. POLK: I would agree with the Court. We would want as much time to proceed with the trial as possible.

THE COURT: I was going to say -- how much time -- considering you're anticipating a rather comprehensive briefing, the state's going to have an opportunity to respond, how much time did both sides want for argument?

MS. POLK: Your Honor, I think the Court is correct, that given the fact that there is going to

1 be written pleadings, that the amount of time
2 needed for argument is minimal.

3 Obviously the state is in the position of
4 responding in the Rule 20. But I think the
5 arguments should be relatively brief.

6 MR. LI: Just in terms of convenience for
7 planning and what have you, I think the idea would
8 be -- if it's the Court's intention that we not
9 spend the day, just spend the morning doing it, and
10 we will have a witness available at 1:00 or 1:30,
11 whatever the Court would want, assuming that the
12 trial continues.

13 THE COURT: That would be the tentative
14 schedule. I would ask people to adopt 1:30 in the
15 afternoon. Because of the -- the state's not going
16 to get the written response until -- I said
17 2:00 o'clock or something like that. What I'd want
18 to do is start the argument at 10:00 o'clock in the
19 morning and allow some time for preparation. And
20 it's just going to be done by noon, a 10-minute
21 break in there, something like that.

22 MR. LI: Your Honor, there is an issue about
23 transcripts. I believe we anticipate that the
24 motion that we'll file will have references to
25 evidence that was adduced at trial. We will affix

10

1 specific pages for the Court's convenience so that
2 the Court doesn't have to leaf through all of the
3 pages.

4 Initially the state had requested that we
5 produce the entire transcript for each witness
6 whether or not we were citing to that particular
7 witness or not. I think out of exuberance
8 Mr. Kelly said, okay, we can do that without
9 thinking about the fact that this is Mina's work
10 product, essentially, and that there are -- this is
11 how she makes her living. And it is my experience
12 that copies of transcripts cost money.

13 And I don't think it would be right for
14 the defense to hand over Mina's work product
15 without Mina being compensated. We have no
16 objection to the state having whatever transcripts
17 they want. And we think that's fine.

18 But it would be, in our view -- and I
19 don't want to speak for Mina. But I think in every
20 court reporter I've ever dealt with, if you're
21 going to get copies of something that constitutes
22 her work product of the last 60 some-odd days,
23 typically they're compensated at the copy rate as
24 opposed to the transcript production rate.

25 So I leave it to the Court on this

1 particular issue. I think, basically, the state
2 should -- well, I leave it to the Court on this
3 issue. I've just never had the experience where
4 the court reporter is not compensated for the work.

5 THE COURT: Ms. Polk, your standing. Do you
6 want to address this?

7 MS. POLK: Your Honor, I had raised the issue
8 before because the state does not have the
9 transcripts. We don't have the resources to
10 purchase them. It's an issue of fundamental
11 fairness. If one side is going to cite to a
12 portion of the transcript, then in the interest of
13 completeness and for the Court's assistance as well
14 as the state's assistance, we ought to have access
15 to the full transcript.

16 I think if defense counsel doesn't want
17 to provide the full transcript to the Court and the
18 state, then they ought not to be allowed to cite
19 certain portions of the transcript.

20 The issue in a Rule 20 is evidence.
21 Transcripts are not evidence. The Court knows the
22 jury never gets to see a transcript. Everybody is
23 told to rely on notes. And, again, I just simply
24 would ask if they are going to pick little pieces
25 out of transcripts, that they provide an entire

12

1 transcript to both to the Court and to the state.

2 THE COURT: Mr. Li.

3 MR. LI: Your Honor, just -- there is no rule
4 of law that requires the defense to pay for
5 transcripts, which we have, and then to subsidize
6 the state so that they can try to prove a case
7 against the defendant.

8 And if the state is asserting that it
9 does not have the resources to purchase
10 transcripts, I don't know what to say. Clearly a
11 lot of resources were expended during this trial in
12 the investigation stage.

13 It sure seems -- if we're really going to
14 talk about fairness, it really is not fair to
15 deprive somebody who works on these transcripts of
16 her income. That would normally be how somebody
17 like her makes her living. Just -- the court
18 reporters all over the country make their living
19 this way. I don't think fairness means that she
20 should not be compensated for her work product.

21 The Court does have transcripts. So the
22 Court can review the evidence. And the state --
23 you know -- can either pay, should either pay for
24 work product that somebody has made over the last
25 four months or do the best it can.

1 THE COURT: Mr. Li, the provision in Rule 20
2 that requires a prompt ruling by the Court -- the
3 Court's decision on a defendant motion shall not be
4 reserved but shall be made with all possible speed.

5 And the way I look at that is this: If I
6 see something in the transcript, Ms. Polk, and you
7 have an indication in your argument that I need to
8 see something else, all possible speed in a trial
9 of this length and with all the detail certainly
10 doesn't mean calling it immediately from the bench.
11 I -- normally that's done.

12 I'm sure there are times when there have
13 been -- there has been an under advisement
14 situation overnight. I'm aware of that rule.

15 But what I'm saying is I'm going to look
16 at what's given me. I said before I think the
17 parties can establish whatever record they wish in
18 presenting to me, and I'll follow the rule. If I
19 think I need to see additional transcript -- I'm
20 going to say that.

21 I'm not going to make a decision when I
22 believe I should see additional evidence. If it
23 takes -- if it means that it doesn't happen, the
24 trial doesn't proceed on Tuesday because of that,
25 that's just how it is at this point. That's how

1 I'm going to handle that.

2 MR. LI: Thank you, Your Honor.

3 MS. POLK: Your Honor, just one more quick
4 issue.

5 THE COURT: I want to know from Ms. Seifter.
6 I think she might have had the proposed exhibit. I
7 don't --

8 MS. SEIFTER: I'm sorry, Your Honor. I think
9 we might need another moment before we can submit
10 it.

11 THE COURT: Okay.

12 Then, Ms. Polk, go ahead.

13 MS. POLK: The final issue for the state is we
14 have requested a couple of times of the defense
15 that they provide us with the actual witnesses that
16 they intend to call from their initial witness
17 list. And it has not been provided yet to the
18 state.

19 MR. LI: We're in the process of doing that.
20 Ms. Do and I were talking about what we would do.
21 And we'll do it in writing.

22 THE COURT: I'd like to know a time. When
23 will that be provided to Mr. Hughes and Ms. Polk?

24 MR. LI: By lunch. I should say after lunch
25 so we can do this witness. And we'll do it during

1 lunch.

2 THE COURT: All right.

3 MS. POLK: Thank you.

4 THE COURT: Then we'll get started. Thank
5 you.

6 (Recess.)

7 (Proceedings continued in the presence of
8 jury.)

9 THE COURT: The record will show the presence
10 of the defendant, Mr. Ray; the attorneys, the jury.
11 The witness, Ms. Gordon, has returned to the stand.

12 And before we begin, ladies and
13 gentlemen, as I've instructed, when you have a
14 concern, you put it in writing to me. And I've got
15 a note. And I just wanted to say, this particular
16 note expressed a concern about really the week of
17 July 13 and then after, whether or not the trial
18 length, essentially, would be something to worry
19 about.

20 And it's my evaluation it is not
21 something to worry about. So I'm going to address
22 it in that fashion. Again, if anybody has any
23 concerns about length of trial, anything at all
24 with regard to the procedure, as you know with
25 regard to the admonition, anything like that at

1 all, do exactly what was done here. Put it in the
2 note so we can address it.

3 If any juror believes that she or he
4 needs to talk to me and the attorneys, the parties,
5 let me know that. That can be done as well.

6 So with that, Ms. Polk.

7 MS. POLK: Thank you, Your Honor.

8 DIRECT EXAMINATION (Continued)

9 BY MS. POLK:

10 Q. Good morning, Ms. Gordon.

11 A. Good morning.

12 Q. How many times do you recall James Shore
13 inside the sweat lodge calling out for help to get
14 Kirby out?

15 MR. LI: Objection, Your Honor. Form of the
16 question, calling.

17 THE COURT: Sustained.

18 Q. BY MS. POLK: How many times do you
19 recall James Shore saying he needed help getting
20 Kirby out?

21 MR. LI: Objection, Your Honor. Misstates the
22 evidence. He said, we need some help here.

23 THE COURT: Not sure what the exact language
24 is. Ms. Polk, just as to form of the question.

25 Q. BY MS. POLK: Ms. Gordon, how many times

1 do you recall James Shore calling out, we need some
2 help here?
3 **A. Once.**
4 MR. LI: Your Honor.

5 THE COURT: Ladies and gentlemen, you've heard
6 the evidence, what the testimony has been from
7 Ms. Gordon before. And you will evaluate questions
8 on how accurately they state the evidence.

9 With regard to that, Ms. Polk, as to the
10 form for that type of question, it really would
11 need to track the actual testimony. And I don't
12 know that it did. I'm going to sustain as to form.

13 **Q.** BY MS. POLK: Ms. Gordon, how many times
14 did you hear James Shore saying something about
15 help?

16 **A. One time.**

17 **Q.** And when was that?

18 **A. At the end of the seventh round.**

19 **Q.** Do you recall your interview with
20 Sergeant Boelts on October 12 of 2009?

21 **A. Somewhat.**

22 **Q.** And let me back up. How many times were
23 you interviewed by law enforcement?

24 **A. Twice.**

25 **Q.** When was the first time?

1 **A. At the location, in person.**

2 **Q.** At Angel Valley?

3 **A. Yes.**

4 **Q.** And where at Angel Valley?

5 **A. In the dining room.**

6 **Q.** And do you recall approximately how long
7 that interview lasted for?

8 **A. 10 minutes.**

9 **Q.** Were you interviewed a second time by law
10 enforcement?

11 **A. Yes.**

12 **Q.** Where did that interview take place?

13 **A. Over the phone.**

14 **Q.** Where were you?

15 **A. In my home.**

16 **Q.** Do you recall the date of that interview?

17 **A. No.**

18 **Q.** Do you recall that it was on October 12
19 of 2009?

20 **A. I don't recall the date.**

21 **Q.** Do you recall whether it was close in
22 time to October 8 of 2009?

23 **A. I don't.**

24 **Q.** Do you recall the name of the law
25 enforcement officer that interviewed you on that

1 occasion?

2 **A. The -- Boelts.**

3 **Q.** And have you had a chance to look at a
4 transcript of that interview?

5 **A. Yes.**

6 **Q.** Let me provide you what's been marked as
7 Exhibit 647.

8 Do you recognize that as the transcript
9 that you've had a chance to review?

10 **A. Yes.**

11 **Q.** And did you not, in fact, tell
12 Sergeant Boelts on October 12 of 2009 that
13 Mr. Shore called out two times for help?

14 **A. I would have to look because I don't
15 recall that in this moment.**

16 **Q.** Did you not, in fact, tell

17 Sergeant Boelts that Mr. Shore called out for
18 help --

19 MR. LI: Your Honor, objection. This isn't
20 cross-examination. This is the state's witness.
21 Also I'd ask that the prosecutor put the transcript
22 at page 10 and 11 in front of this witness.

23 THE COURT: Sustained.

24 MS. POLK: Your Honor, may I approach?

25 THE COURT: Pardon?

1 MS. POLK: May we approach?

2 THE COURT: Yes.

3 (Sidebar conference.)

4 THE COURT: Go ahead, Ms. Polk.

5 MS. POLK: Your Honor, I'm confronting her
6 with a prior inconsistent statement. I am -- first
7 you have to give her the opportunity to admit or
8 deny it. Inconsistent statement is that on the
9 12th she told Sergeant Boelts that Mr. Shore called
10 out two times, once between the sixth and the
11 seventh round and a second time between the seventh
12 and the eighth round. I have the audio clips, and
13 I'm prepared to play that. But I'm in the process
14 of confronting her with the statement, according to
15 the rule.

16 THE COURT: Mr. Li.

17 MR. LI: Your Honor, first of all, it's not
18 inconsistent in the sense that she's not saying --
19 first of all, the transcript itself on the 8th,
20 this is what she says.

21 THE COURT: I can't see.

22 MR. LI: I'm sorry. And there and then the
23 next page. And what happens is that the detectives
24 keep on asking questions like, so when you heard
25 Kirby say -- just for example right here. So he

1 says, Kirby needs help. And she has a different
2 statement.

3 So what the prosecutor is attempting to
4 do is pin her to some statement that the police
5 made and tried to get her to adopt -- her testimony
6 right here has been truthful, straightforward. And
7 it's the state's witness.

8 THE COURT: And people can impeach their own
9 witness.

10 MR. LI: I understand that.

11 THE COURT: With prior inconsistent
12 statements. So -- but a lot going on. I want to
13 hear what the --

14 MR. LI: I want to know what the prosecutor
15 thinks is an inconsistent statement. I'd like to
16 know ahead of time because this is very unusual.

17 MS. POLK: Judge, this isn't unusual at all.
18 This trial has been full of confronting witnesses
19 with prior inconsistent statements through the use
20 of audio. Mr. Li pointed you to the interview on
21 the 8th. I'm asking her about the interview on the
22 12th wherein she said where Mr. Shore called out
23 twice. The first time he yelled, and later he's
24 quiet. I'm going to confront her with those audio.

25 And Mr. Li's argument would go to weight.

1 If he wants to try to bring in some other
2 statements, he can, proceeding in accordance with
3 the rule, confronting her with the statements and
4 play the audio.

5 MR. LI: The audio has come in when there is a
6 change in demeanor, when there is some sort of
7 observable difference where the witness says she
8 was under distress or some sort of horrible
9 condition. And then you play the audio, which
10 shows, in fact, that's not what they were doing and
11 that their demeanor was entirely different.

12 This witness -- what you have here,
13 essentially, is Ms. Polk can simply just ask her to
14 say "X," and the witness -- I will predict, just
15 seeing how she's testified so far, she will say
16 well, let me look at it, and she'll say yeah, I
17 did.

18 THE COURT: Parties can impeach their own
19 witness. What needs to be done is what her
20 testimony is. Now, that tends to be an asked and
21 answered kind of situation. But if there is a
22 difference here, then it would have to start with
23 what is her testimony now.

24 And then the regular way of impeachment,
25 giving her a chance to explain the difference, she

1 can look at it -- Mr. Li has to know the exact
2 passage -- and we go from there. We can proceed.

3 MR. LI: No. She's not doing that. She just
4 wants to play the tape. And the difference between
5 this particular situation and other situations
6 is -- take Mark Rock, for instance. Mark Rock
7 makes a statement about his condition that he
8 was --

9 THE COURT: I know.

10 MR. LI: That's a profoundly different
11 situation. And we have not been allowed to play
12 the tapes when there is no particular reason. And
13 we have used the transcripts.

14 THE COURT: Ms. Polk, I didn't hear you say
15 you wanted to play the tape. I thought you wanted
16 to do an impeachment with this transcript.

17 MS. POLK: No. I'm going to impeach her with
18 her words. I'm not going to play the entire tape.
19 I'm going to play just particular portions of tape
20 just until the defense is done. I've got the
21 audios prepared. And I'll provide the passage via
22 the transcript to the defense just as they have
23 done many times through this trial, Your Honor.

24 I'm not trying to play the entire tape,
25 just little passages.

1 MR. LI: See, that's just -- the normal
2 procedure would be just for her to do the
3 transcript. Because there is no question about her
4 demeanor. This witness has not said anything
5 about --

6 THE COURT: Mr. Li, I know that. Really I do.
7 I'm just trying to think if there haven't been
8 other instances where it's been beyond a situation
9 of demeanor. I think it's been argued. I don't
10 know that I've allowed it.

11 If someone is, basically, saying I'm so
12 traumatized, I didn't know what I was saying, and
13 they get up and arguably they make a very detailed
14 statement where they're responding -- when someone
15 says that I really just wanted to not proceed any
16 further; but, in fact, you hear what arguably is an
17 enthusiastic person continuing with the interview,
18 it had a whole separate purpose.

19 And, Ms. Polk, I offered to have a
20 limiting instruction. I acknowledged it could be
21 difficult exactly how -- if it wouldn't make it
22 worse. But I even recognized that it was brought
23 in for a specific purpose. It's not present here.

24 So speaking specifically with regard to
25 Mark Rock, it's a whole different situation. I

1 mean, she can be -- if there is impeachment here
2 because it's a different -- there is another aspect
3 to impeachment too. And I raised this before. And
4 that is if she doesn't remember making this prior
5 statement, is it really inconsistent?

6 MR. LI: Right.

7 MS. POLK: It is. According to the rule, if
8 the person does not remember or denies it, you can
9 impeach her or present her with a prior statement.

10 THE COURT: I think Arizona actually finds the
11 rule that requires the finding of the Court that
12 the inability to remember has to do with deceit,
13 deception.

14 MS. POLK: Your Honor, this is not -- this
15 witness has testified Mr. Shore called out one time
16 between the seventh and the eighth. On the 12th
17 she told the detective that Mr. Shore yelled out
18 between the sixth and the seventh and again between
19 the seventh and the eighth -- called out, said
20 something in a weak voice.

21 Can I finish?

22 MR. LI: Yes.

23 MS. POLK: The only time that audio has been
24 played on the issue of demeanor was with Mr. Rock.
25 And that's when the Court let the entire two

1 interviews be played. Other than that, throughout
2 this trial defense has repeatedly played little
3 audio clips of prior inconsistent statements
4 because their words, the audio, is the best
5 evidence. A transcript is second.

6 So I'm not understanding why I would be
7 allowed to read from a transcript but not allowed
8 to play audio clips. I have them queued just as
9 the defense has done throughout this trial. I will
10 provide the defense with the page and line numbers
11 I'm going to play.

12 And I have confronted her with the
13 inconsistent statement. I've given her -- and she
14 said no, she did not. And now I'm going to play
15 it. It's entirely consistent.

16 MR. LI: May I speak? Are you done?

17 MS. POLK: Yes.

18 MR. LI: It's not an issue of deceit or any of
19 the sort of implications that Ms. Polk might want
20 to make. What you have here is a person being
21 interviewed and just being in a long narrative,
22 being asked questions along the lines of the one
23 you saw.

24 And ultimately she corrects her interview
25 in those very transcripts where she says -- she

1 doesn't say, called out. She said exactly what her
2 testimony was today.

3 And what I think is unfair is that you
4 get a person after -- you know -- after the
5 incident, and then they give some sort of narrative
6 response. And then they say, okay. Well, here's
7 what I mean, which is a normal way of speaking.
8 It's not in the courtroom.

9 And then to have the prosecutor call this
10 an inconsistent statement and then ask the Court to
11 make the finding that this is proper impeachment
12 because of the various rules relating to
13 untruthfulness and what have you -- this witness is
14 not untruthful.

15 THE COURT: What can be done with this witness
16 is if there is impeachment, my memory, those
17 other -- I thought it was unusual -- a lot of
18 things were unusual. Playing the evidence during
19 the opening was unusual. It happened.

20 My recollection is there were additional
21 reasons for playing those audio portions. And with
22 this witness I don't find it at all somehow being
23 deceptive. I don't think she's been given a full
24 opportunity to explain any discrepancy. I think
25 this can be shown to her. If anyone is disputing

1 the accuracy of the transcript, this can be shown
2 to her to see if it refreshes her recollection.
3 That's what I think is appropriate.

4 Ms. Polk.

5 MS. POLK: Your Honor, I want some
6 clarification. It's just that throughout the trial
7 the defense has played audio, snippets of audio.
8 They queue them and play them when it's an
9 inconsistent statement. I'm not understanding why
10 I can't do the same.

11 THE COURT: And I'd be troubled if -- it's not
12 the normal way to do an impeachment. People are
13 talking about they're under a great deal of
14 emotional stress, so that the actual hearing of the
15 evidence, it's an unusual circumstance. People
16 talked about being in a trial and if it had to do
17 with the October 8 interviews. It adds a whole
18 element that's not there with the normal
19 impeachment. It is unusual.

20 I say that. But with this I'm not even
21 clear -- as Mr. Li points out, the questions come
22 back like -- you know -- he puts a name in there,
23 and she answers with "we" or something like that.

24 I'm saying the normal way to proceed is
25 to use written documentations. I don't find that

1 she's being deceptive at all. I don't find any of
2 that. With Mr. Rock -- obviously there were those
3 concerns with Mr. Rock and prior inconsistent
4 statements at least. I think that was apparent to
5 everyone under those circumstances.

6 But she can be shown this to refresh her
7 recollection. You can question on it to see if now
8 she thought that maybe she did say something at a
9 different time. That's what can be done with this
10 transcript.

11 Thank you.

12 (End of sidebar conference.)

13 THE COURT: Counsel.

14 MS. POLK: Thank you.

15 Q. Ms. Gordon, you've had a few minutes to
16 look at the transcript while we've been at the
17 sidebar?

18 A. Yes.

19 Q. And let me start over again. As you
20 testify here today, how many times do you recall
21 Mr. Shore mentioning the need for help during the
22 sweat lodge ceremony?

23 A. Twice.

24 Q. And when was the first time?

25 A. When he was helping get Sidney out.

1 Q. And what do you recall about that?

2 A. That he was asking for help to pull her
3 out.

4 Q. And let me direct your attention, then,
5 to Exhibit 695, which is the -- I'm sorry. 647.
6 Is that the transcript you have in front of you?

7 A. Yes.

8 Q. And that would be a transcript of your
9 interview with Sergeant Boelts on October 12
10 of 2009?

11 A. Yes.

12 Q. Let me direct your attention to page 4.
13 And do you see starting on page 11 it says, Gordon?

14 A. Yes.

15 Q. And can you read what you said.

16 A. And then next to him --

17 MR. LI: Your Honor, objection. What's the
18 purpose? Is it to refresh? There is no question
19 pending.

20 THE COURT: Sustained.

21 Q. BY MS. POLK: Did you on October 12,
22 Ms. Gordon -- did you tell Sergeant Boelts that
23 after Sidney was drug out and after James Shore
24 came back in and recognized that somebody else was
25 struggling and gasping and gurgling that that's

1 when he yelled out, I need help getting her out?

2 MR. LI: Objection. Form of the question.

3 THE COURT: Overruled.

4 THE WITNESS: I need to read this because
5 that's not now I recall it.

6 THE COURT: Ma'am, would you speak closer.

7 THE WITNESS: I need to review this. That's
8 not how I recall it.

9 MS. POLK: Well, let me read it with you. If
10 we can look at page 4 --

11 MR. LI: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. LI: Just for the record, that's not what
14 this transcript says.

15 THE COURT: Mr. LI.

16 MR. LI: Sorry.

17 THE COURT: I want the witness to have an
18 opportunity to review the transcript and refresh
19 recollection.

20 Q. BY MS. POLK: Let me direct your
21 attention, if you would, to page 4 of Exhibit 647.
22 If you would read to yourself lines 11 through 24.

23 A. Okay.

24 Q. Does that refresh your recollection as to
25 what you told Sergeant Boelts on October 12, 2009?

1 A. Yes.

2 Q. Can you tell the jury what you told
3 Sergeant Boelts then.

4 A. Is that after the beginning of round 7,
5 that's when Shore -- we had -- that's when he had
6 asked for help to get her out.

7 Q. To get who out?

8 A. Assuming Kirby at that point.

9 Q. That was before the beginning of round 7?

10 A. That was -- yes. Just at the beginning
11 of round 7.

12 Q. And what did you tell Boelts that James
13 Shore said before the beginning of round 7?

14 MR. LI: Objection, Your Honor. This is
15 actually hearsay.

16 THE COURT: Sustained.

17 Q. BY MS. POLK: Did you tell
18 Sergeant Boelts on October 12 of 2009 that before
19 round 7 began --

20 MR. LI: Objection, Your Honor. That's
21 flipping the question around. It's also hearsay
22 and leading of the government's own witness.

23 THE COURT: Counsel, ladies and gentlemen,
24 we're going to take a recess right now. Please
25 remember the admonition.

1 Ma'am, you are excused from the courtroom
2 at this point for a few minutes, about 10 minutes.
3 I want to speak with the parties.
4 Thank you.
5 (Proceedings continued outside presence
6 of jury.)

7 THE COURT: We need to get this on track right
8 now.

9 Ms. Polk, you indicated you intended to
10 rest your case today. The clerk has been keeping
11 track of time for me, as I requested. You've gone
12 overtime, the proposed time of both witnesses. We
13 have this issue now, and we just need to get this
14 straightened out, not just on these bench
15 conferences with the inconvenience that goes to the
16 jurors and others.

17 First of all, I want to clarify -- excuse
18 me -- the law with regard to impeachment. When the
19 Court has to make a finding concerning possible
20 deception, that's when a person testifies there is
21 no memory as to the event. Has nothing to do with
22 remembering what was said at the first interview or
23 anything like that. It's when someone says they
24 have no memory with regard to the events.

25 So I want to clarify. Because some of

1 the things that were said in the bench conference I
2 think I was confusing the law on that. But that's
3 the law. And I don't think we're in that
4 situation.

5 This person has testified with regard to
6 events, is not claiming a lack of memory where the
7 Court then has to decide is there some type of
8 deception and then the prior statement can come in.
9 The Court's confused that sometimes.

10 Ms. Polk, with regard to playing the
11 audio, I want to make that clear on some of the
12 other ones. My thought, my recollection, is the
13 audio was played when there was really a reason
14 other than just the text to be playing that.

15 Mr. Rock was the clearest example of
16 that, indicating that he had problems because he
17 was in shock and those things. And playing the
18 actual recording had an additional evidentiary
19 purpose arguably.

20 Again, I'm not taking any position on the
21 evidence at all on this. But on this I'm not clear
22 what the statement is, what's going to be
23 impeached, if it's a chance for her to refresh her
24 recollection first before testifying. So we've
25 just got to get this straightened out. This

1 happened when trial started. It's happening again.

2 So, Ms. Polk.

3 MS. POLK: Your Honor, the statement that I
4 am -- the prior inconsistent statement that I'm
5 confronting the witness with now, the first one was
6 she said that Mr. Shore only -- and I know Mr. Li
7 objects to the word "called out." But that's the
8 only word I can think. I'm going to use it now
9 understanding there is a difference there.

10 Ms. Gordon during the trial a little bit
11 this morning and yesterday said the only time that
12 Mr. Shore called out was between the seventh and
13 the eighth -- called out for help.

14 On October 12, she told the detective
15 that Mr. Shore called out two times. The first was
16 between the sixth and the seventh after he returned
17 from dragging Sidney out, that it was after
18 hearing -- seeing an additional person that she
19 later says is Kirby not breathing, struggling.

20 And then her words to Detective Boelts,
21 Sergeant Boelts, on October 12 were, James -- James
22 yelled, I need help getting her out. No one came.
23 And then at that point, I think it was round 7, and
24 James Ray -- it was time to bring in more of the
25 stones and close the flap and do the -- continue on

1 with the ceremony. And all along you could hear
2 her gurgling like -- or I could hear her gurgling,
3 like, every breath in, every breath out. It
4 sounded like there was fluid. It was real odd.
5 Sounded like breath in, breath out. I can't
6 duplicate the sound.

7 Then now round 7 was over. And now it's
8 round 8. And we're, like, thinking, oh, my God.
9 One round left. It was taking forever to get --
10 like, there was lot of commotion going on. I'm not
11 fully aware. I'm trying to be in total
12 self-preservation, focusing on -- you know --
13 breathing and keep my heart rate down.

14 And you could still hear Kirby, Kirby
15 Brown. You could still hear Kirby going through
16 this. And then James said again -- the deceased
17 James said, I -- you know -- I need help. Let's
18 get her out of here.

19 And at that point so much had gone on
20 that it was now at the stage where the flap was
21 coming down. And there was -- you can't leave.
22 It's dark -- because it's pitch dark in there. So
23 Kirby -- and we went through a whole another round.
24 And now, then, the flap is open, and James Ray is
25 saying, it's okay. Everybody come out in orderly

1 fashion.

2 And then further on she is confronted
3 about the yelling. And she says -- talks about how
4 his voice wasn't so strong, which, I believe,
5 applies to the second time.

6 The witness, Your Honor, at first said
7 just -- she testified that just one time did
8 Mr. Shore call out for help. When I had her
9 refresh her recollection, then she said, okay. He
10 called out twice. But the first time referred to
11 Sidney Spencer.

12 When I confronted her with the language
13 that it applies to Kirby Brown, then she had
14 said -- and this is where we're at the point now --
15 that it is Kirby.

16 But there are additional issues that are
17 inconsistent. One is the fact that the first time
18 he, James Shore, calls out -- she told this to
19 Detective Boelts -- he yelled that he needed help.
20 And then the second time is between round 7 and
21 round 8 when he uses a weaker voice.

22 All of those are inconsistent statements,
23 Your Honor, with how she's testifying today.

24 THE COURT: There were a lot of statements
25 there that I believe to be very consistent with

1 what's the testimony. As to going through a long
2 passage like that, it would not be appropriate for
3 that purpose.

4 But, Mr. Li.

5 MR. LI: I agree, Your Honor. The problem is
6 this: If you take this -- this narrative statement
7 here given -- you know -- and you just start
8 pulling out little selections and you say, well,
9 that's inconsistent with the question that I just
10 asked her, and she doesn't quite understand the
11 question that Ms. Polk is asking. And then we
12 manufacture -- I'll -- strike that.

13 We create an inconsistency and then try
14 to read the statement as if it were an
15 inconsistency into the record. That's the problem
16 that we're having with this.

17 If it were precise, if there were -- you
18 know -- issues where the witness said the light was
19 red but now she's saying it was green and you could
20 actually have a clear set of questions that the
21 prosecutor is asking, a clear set of questions that
22 the detective was asking, and you're able to put
23 them together and then show that there is actually
24 an inconsistency.

25 And the problem here is that we're

1 pulling pieces out of the transcript, most of which
2 is actually quite consistent with the testimony
3 that the prosecutor's own witness adduced
4 yesterday, and then reading it as if it were
5 inconsistent. That's the problem, Your Honor.

6 THE COURT: It appears there could be some
7 inconsistencies.

8 So, Ms. Polk, it just has to be precise.
9 I have to know what is it that Ms. Gordon is
10 testifying to either yesterday or today. What is
11 she testifying and what is the specific item that's
12 different?

13 MS. POLK: And, Your Honor --

14 THE COURT: That's what needs to be -- just to
15 sort through three minutes, however long that was,
16 that long paragraph, and say well, pick out what
17 might be inconsistent, that's not appropriate.
18 It's not permitted.

19 Go ahead.

20 MS. POLK: And, Your Honor, two things. First
21 of all, I think it's clear that she started out
22 testifying today saying that Mr. Shore had only
23 called out one time. I think it's clear that
24 she -- when I had her refresh her recollection, she
25 tried to say that it applied to Sidney Spencer.

1 And then that context is what -- from that context,
2 that's how it's clear that it applies to Kirby
3 Brown.

4 I'm trying to lay it out. But, frankly,
5 with the objections, I think, it's getting
6 confusing. But I'm trying to confront her with the
7 inconsistent statement and give her the chance to
8 explain or to read the statement to her.

9 Again, I -- Your Honor, I have the audio
10 clips queued up. I think the audio is the best
11 evidence. And it's quick. They are short, little
12 snippets. But that's where this argument that
13 Mr. Li is making comes in. It gives the jury the
14 context. I'm not trying to pick one line out, as
15 it's being suggested. I'm trying to give the full
16 context of these statements.

17 THE COURT: They include a lot of statements
18 that are just consistent with what's been testified
19 to. It has to be precise. You brought up some
20 points about the level of voice used, how many
21 times. There can be questioning on that. Everyone
22 acknowledges there can be impeachment of one's own
23 witnesses, a party's own witness.

24 But not -- I'm not going to permit
25 playing of a passage. You say it's relatively

1 brief. What you read to me was lengthy.
 2 And I need to know what -- where the
 3 witness stands now before I can assess the question
 4 that's being used for impeachment. So you can
 5 continue on this. But it has to be directed to --
 6 to points.

7 MR. LI: Your Honor, I apologize for the
 8 objections even before the prosecutor is finished
 9 her questions. But many of the questions are
 10 simply just reading the transcript.

11 And I guess the problem that this witness
 12 is having is that the questions are not -- there
 13 is -- this is her witness. That they're not
 14 open-ended questions to start with. What happened?
 15 Tell me what happened. That's when you get the
 16 response from your witness, and they'll tell you
 17 whatever they tell you.

18 THE COURT: I've seen enough to -- that
 19 indicates there could be some inconsistencies here.

20 Ms. Polk, you can question about that.
 21 But it just has to be on point, not where it's just
 22 launching into reading a prior interview, which if
 23 it's not inconsistent, it's hearsay in most
 24 instances.

25 So -- I want to get the jury back. We

1 will need to take the recess for Mina and staff.
 2 (Recess.)
 3 (Proceedings continued in the presence of
 4 jury.)

5 THE COURT: The record will show the presence
 6 of Mr. Ray, the attorneys, the jury. Ms. Gordon is
 7 on the stand.

8 Ms. Polk.

9 MS. POLK: Thank you.

10 Q. I apologize. Let's see if we can get
 11 through this. How many times did you hear
 12 Mr. Shore call out or say something about help
 13 during Mr. Ray's sweat lodge ceremony on October 8
 14 of 2009?

15 A. Twice.

16 Q. And when was the first time?

17 A. I recall around Sidney being pulled out.

18 Q. And who pulled Sidney out?

19 A. Shore and someone else. I don't know
 20 who.

21 Q. And after Mr. Shore came back, what did
 22 you and Mr. Shore -- what was your attention --
 23 what was your attention drawn to?

24 A. Kirby, the sound of her breathing. And
 25 so we discussed -- I don't recall who initiated.

1 But I did say to him, let's get her off -- I asked
 2 him get her off her back. And he couldn't do it on
 3 his own.

4 Q. Was this when the flap was opened or
 5 closed?

6 A. Closed.

7 Q. And before the flap was closed, did you
 8 hear Mr. Shore say something about help?

9 A. Not regarding the situation with Kirby.
 10 I believe it had to do with Sidney.

11 Q. On October 12 of 2009, when you were
 12 interviewed by Sergeant Boelts, did you not tell
 13 Sergeant Boelts then that it had to do with Kirby?

14 A. I did say that.

15 MR. LI: Your Honor, if I can take this
 16 witness on voir dire?

17 THE COURT: Not at this time.

18 Mr. Li, you will have an opportunity to
 19 cross-examine, of course.

20 Ms. Polk, please continue.

21 Q. BY MS. POLK: On that date what did you
 22 tell Sergeant Boelts?

23 A. That he yelled out, we need help over
 24 here.

25 Q. On that date you used the word, "yelled,"

1 that James Shore yelled out?

2 A. Yes.

3 Q. That was while the flap was still open?

4 A. It was. However, that's when the hot
 5 rocks were coming in at that time. So it was at
 6 the -- at a point where it was at the beginning or
 7 the end of a round.

8 Q. Did you hear Mr. Ray say something at
 9 that point?

10 MR. LI: Objection as to what "that point"
 11 means. What's the sequence?

12 THE COURT: Sustained.

13 Q. BY MS. POLK: After James Shore yelled
 14 out, I need help getting her out, what happened
 15 next?

16 A. The flap closed.

17 Q. You testified a moment ago about rocks
 18 coming in. Did you hear Mr. Ray say anything
 19 before the flap closed?

20 A. I'm not sure if it was at that round or
 21 the next round. But yes. There were words at one
 22 of the closing of the flaps.

23 Q. At this point you're testifying about the
 24 beginning of the seventh round?

25 A. Yes.

1 Q. And then tell the jury what happened
2 during the seventh round with respect to Kirby
3 Brown.

4 A. Shore and I got her off of her back. He
5 got on the left side of her and pulled her arms.
6 And I put my feet under her back to help push her
7 up while Shore was pulling her.

8 Q. That was during the seventh round?

9 A. That was during the seventh round.

10 Q. When the seventh round came to an end,
11 what happened?

12 A. I remember just it taking a long time
13 to -- there is just a lot of commotion. I'm not
14 sure what it was. But it was -- it felt like a
15 long time before the next round. The rocks came in
16 and the next round started.

17 Q. And during that period of time, did you
18 hear Mr. Shore say anything?

19 A. I did.

20 Q. And tell the jury what you heard him say
21 that time.

22 A. That he needed help getting her out.

23 Q. When you heard him say that, was the flap
24 opened or closed?

25 A. I believe it was open.

1 Q. And what sort of voice did Mr. Shore use
2 that time?

3 A. Not a very strong one. More than talking
4 but less than shouting. And, again, I was close to
5 him so I could hear it.

6 Q. And do you recall the words that
7 Mr. Shore used that time?

8 A. We need help getting her out. We need
9 help over here. We need help getting her out.

10 Q. Did you hear Mr. Ray respond?

11 A. Again, I'm not sure if it was at that
12 point. But at some point when the rocks were
13 coming in or the flap was being closed, it was
14 stated, no one can leave at this time.

15 Q. At the end of round 7, do you recall
16 whether you heard Kirby breathing?

17 A. At the end of round 7. Yes.

18 Q. During that period of time between
19 round 7 and round 8, did anybody come check up on
20 Kirby?

21 A. I don't know that.

22 Q. And during that period of time between
23 round 7 and round 8, did you observe anything else
24 about James Shore?

25 A. Physically where he was. I observed that

1 he was on the other side of Kirby. He was upright
2 on his right elbow facing Kirby.

3 Q. Once round 8 began, after the flap was
4 closed, what did you observe?

5 A. Kirby's -- I could hear Kirby breathing.
6 And I could hear James saying things to Kirby --
7 sweet things. We were both encouraging her to keep
8 breathing. And James was saying -- just -- I don't
9 know the exact words. But they were like that.
10 Keep breathing. It's going to be okay. Those
11 types of things.

12 Q. How long, if you recall, into round 8 was
13 Mr. Shore saying sweet things to Kirby?

14 A. I would say almost the entire time.
15 Maybe halfway to more than half.

16 Q. You testified yesterday about your belief
17 that Mr. Shore lifted the edge of the flap or the
18 tent.

19 When do you believe that occurred?

20 A. Maybe halfway through the eighth round.

21 Q. And when that happened, did you hear
22 Mr. Ray say anything?

23 MR. LI: Objection. Asked and answered.

24 THE COURT: Overruled.

25 You may answer that.

1 THE WITNESS: Turn -- turn the light off.

2 Q. BY MS. POLK: Did you ever call out for
3 help for Kirby?

4 A. No.

5 Q. And why not?

6 A. Do I have to answer that?

7 THE COURT: Yes.

8 Q. BY MS. POLK: Let me ask you another
9 question. Is there a reason you don't want to
10 answer that?

11 A. I'll answer it. I was in the environment
12 for experiential reasons, for my own growth, and I
13 was not in a position to partner with gaining help.
14 So my mind-set was not one of seeking help. My
15 mind-set was one of continuing on a journey that I
16 had set out to complete.

17 Q. BY MS. POLK: Did you know, Ms. Gordon,
18 if the breathing you were hearing from Kirby was
19 normal?

20 A. I did not know.

21 Q. And why is that?

22 A. Because I'd never been in a sweat lodge
23 before.

24 Q. Did you believe at that time that Kirby
25 was passed out?

1 **A. Yes.**
 2 **Q.** And did you know whether that was normal?
 3 **A. I did not know if it was normal or**
 4 **abnormal.**
 5 **Q.** Prior to entering the sweat lodge, had
 6 Mr. Ray said anything about the possibility of
 7 participants passing out?
 8 **A. I did hear that.**
 9 **Q.** What do you recall Mr. Ray saying about
 10 that?
 11 **A. There is a possibility someone could pass**
 12 **out.**
 13 **Q.** Where were you when Mr. Ray said that?
 14 **A. In the classroom.**
 15 **Q.** Did Mr. Ray talk about what to expect
 16 inside the sweat lodge on more than one occasion --
 17 at more than one location?
 18 **A. He did in the classroom, and he may have**
 19 **outside of the tent. But at that point, as I said**
 20 **earlier, I was not paying a lot of attention at**
 21 **that point. I think I was nervous. So he may**
 22 **have.**
 23 **Q.** Is it possible you heard Mr. Ray's
 24 statements about people passing out at a location
 25 other than in the classroom?

1 **A. It would have been those two times. It**
 2 **would have been either in the classroom or in the**
 3 **additional briefing that he gave outside of the**
 4 **tent, which I did not pay a lot of attention to.**
 5 **Not his fault. My choosing to just -- I wasn't**
 6 **paying attention.**
 7 **Q.** Are you able to remember today for the
 8 jury when the last time was that Kirby was
 9 unconscious -- conscious or not passed out?
 10 **MR. LI:** Your Honor, I'm going to object on
 11 lack of foundation.
 12 **THE COURT:** Overruled.
 13 **THE WITNESS:** When she was saying the words,
 14 "we can do it." So somewhere it had to have been
 15 around the fifth or sixth round. That's when I was
 16 aware of her being awake. It could have been
 17 longer.
 18 **Q.** BY MS. POLK: When is the last time that
 19 you have a memory of actually seeing Kirby inside
 20 the sweat lodge?
 21 **A. When I was leaving at the end of round 8.**
 22 **Q.** When it was over?
 23 **A. Yes.**
 24 **Q.** And what did you see about Kirby at that
 25 time? Was she face up or face down?

1 **A. She was on her side.**
 2 **Q.** And did you get a look at her face?
 3 **A. No.**
 4 **Q.** What about Kirby did you see?
 5 **A. Just the back of her. And I remember as**
 6 **I was leaving, her legs or her feet. Mainly her**
 7 **legs, like, the calves. That's what I remember.**
 8 **Q.** Was she --
 9 **A. Facing away from me.**
 10 **Q.** Stretched out on the ground?
 11 **A. Yes.**
 12 **Q.** When is the last time you remember
 13 seeing -- when is the last time you remember James
 14 Shore saying anything?
 15 **A. In round 8 when he was saying sweet**
 16 **things to her.**
 17 **Q.** Are you able to recall today when -- at
 18 what point during round 8 did you last hear
 19 Mr. Shore say sweet things?
 20 **A. Maybe halfway to more than a little --**
 21 **halfway -- beyond halfway through the round.**
 22 **Q.** And I may have asked you this already,
 23 but do you have a recollection of how many minutes
 24 the last round was?
 25 **A. I don't.**

1 **Q.** Do you have a recollection as to how many
 2 rocks were brought in before the last round
 3 started?
 4 **A. No.**
 5 **Q.** What other things, if any, do you recall
 6 people saying inside the sweat lodge while the
 7 ceremony was going on?
 8 **MR. LI:** Objection. Form of the question.
 9 **THE COURT:** Overruled.
 10 **THE WITNESS:** I remember the -- Kirby saying
 11 repetitively, we can do it. I remember other
 12 people yelling out asking her to shut up. I
 13 remember James Ray saying, turn the light out. I
 14 remember at the beginning of each round James Ray
 15 would have words to say about that round.
 16 In the earlier rounds there was singing
 17 and instruction on the words. I remember at the
 18 end words being said about it's over, and you can
 19 leave now. Grab your pouches, and you can go.
 20 **Q.** BY MS. POLK: Do you recall hearing other
 21 people say, I need help? I need help getting a
 22 person out? They're passed out?
 23 **A. I don't remember that.**
 24 **Q.** And if you had a chance to look at the
 25 transcript of your interview with Detective Boelts,

1 would that help refresh your recollection.
 2 **A. (No audible response.)**
 3 **Q.** Could you take a look, then, at that
 4 exhibit. It's Exhibit 647. If you would take a
 5 look at page 24, lines 1 through 15. And just look
 6 at that for a couple moments, if you would.
 7 **A. Okay.**
 8 **Q.** Does that refresh your recollection?
 9 **A. It does.**
 10 **Q.** Will you tell the jury if you heard
 11 others talking about needing help.
 12 **A. I did.**
 13 **Q.** Tell the jury what you remember.
 14 **A. I remember early on to the other side of**
 15 **me people asking for help taking people out.**
 16 **Q.** And you said to the other side of you.
 17 I'm going to put back up on the overhead
 18 Exhibit 414.
 19 Will you put the place where you were
 20 again for us.
 21 And then put the area where you heard
 22 other comments.
 23 **A. In this area here.**
 24 **Q.** When do you recall hearing some comments
 25 from that area?

1 **A. It seemed to be earlier than later. So**
 2 **maybe round 3.**
 3 **Q.** What do you recall hearing?
 4 **A. People -- always some commotion or noise**
 5 **and -- I need help. I need help taking this person**
 6 **out. I need help.**
 7 **Q.** Do you recall if Mr. Ray responded at
 8 that time?
 9 **A. I don't recall that.**
 10 **Q.** Would you take a look again at page 24,
 11 Exhibit 647. And look at lines 11 to 15.
 12 **A. Okay.**
 13 **Q.** Does that refresh your recollection?
 14 **A. It's the same. I have the same memory.**
 15 **Q.** And what is that?
 16 **A. That's what I just said. That's what I**
 17 **remembered, that people asking for help, and I**
 18 **don't know who. And I remembered lots of**
 19 **commotion, and I remember it from that direction.**
 20 **Q.** Do you remember hearing anybody respond?
 21 **A. I don't.**
 22 **Q.** And, again, if you look at 647, lines 11
 23 through 15.
 24 **A. It's written here, but I'm sharing with**
 25 **you that I don't remember it in this moment.**

1 **Q.** Okay. I understand.
 2 So when Detective Boelts asked you, and
 3 was there any response from Mr. Ray, what did you
 4 say? You can just read that. You can read it out
 5 loud.
 6 **A. What are you asking me to read?**
 7 **Q.** Page 24. You see on line 10 where
 8 Detective Boelts says, and was there any response
 9 from Mr. Ray? And then line 11 says, Gordon.
 10 And then what did you say?
 11 **A. I think early on he was, like, okay --**
 12 **you know. Get help. Help, somebody. There was a**
 13 **lot of talk about help. And I don't know if that**
 14 **was directly from him or people around me or what.**
 15 **I just know that people were getting drug out and**
 16 **people were asking for help to drag people out.**
 17 **Q.** Do you have any recollection today,
 18 Ms. Gordon, of how many people were dragged out?
 19 **A. No.**
 20 **Q.** And other than Sidney Spencer, did you
 21 ever see other people dragged out?
 22 **A. Yes. But I don't know who.**
 23 **Q.** When was it that you saw someone else
 24 dragged out?
 25 **A. Before Sidney.**

1 **Q.** Do you recall from what area of the sweat
 2 lodge?
 3 **A. From this side of me.**
 4 **Q.** Did you ever hear -- I'm sorry. Did you
 5 ever hear anyone say, only one more round? There
 6 is only one more round? Everything will be fine?
 7 MR. LI: Objection. Leading.
 8 THE COURT: Overruled.
 9 You may answer that.
 10 THE WITNESS: I remember someone saying that
 11 there is only one more round.
 12 **Q.** BY MS. POLK: Do you remember when that
 13 was said?
 14 **A. I'm guessing at the end of seven.**
 15 **Q.** And do you recall who it was who said
 16 that?
 17 **A. No.**
 18 **Q.** Do you recall what direction that voice
 19 came from?
 20 **A. It seemed that it was coming from this**
 21 **direction here, from over here.**
 22 **Q.** When you -- when the ceremony was over,
 23 Ms. Gordon, and you left, do you recall whether or
 24 not you crawled over other people?
 25 **A. Not literally over people. There was a**

1 **space between where people's feet were and the fire**
2 **pit, so I had space to do that.**

3 Q. And once you got outside -- were you able
4 to get yourself out from the entrance outside on
5 your own?

6 A. Yes.

7 Q. And outside -- I'm going to put up this
8 exhibit that has some tarps on it. This is
9 Exhibit 145.

10 Once you got outside, where did you go?
11 And how did you get there?

12 A. I crawled.

13 Q. What did you do -- did you go to the
14 tarp?

15 A. Yes.

16 Q. What did you do when you got to the tarp?

17 A. Laid face down.

18 Q. What happened next?

19 A. I felt cold water on my back.

20 Q. Do you know where it came from?

21 A. No.

22 Q. How long did you stay on that tarp?

23 A. Just a few minutes, maybe five minutes.

24 Q. Did you revive?

25 A. I did.

1 Q. How long did it take you to revive?

2 A. To where I could stand on my own, about
3 five minutes.

4 Q. And then what did you do?

5 A. Went to get my glasses. Yes. I went to
6 get my glasses.

7 Q. And then what did you do?

8 A. Then I went to get my -- the pouches that
9 were still hanging inside of the tarp underneath.

10 Q. Do you recall telling the detective
11 during the interview on October 12 that it was a
12 long time before you could stand on your own?

13 A. I don't recall that.

14 Q. Could you take a look at page 25.

15 MR. LI: Which exhibit, Counsel?

16 MS. POLK: 647, page 25.

17 THE WITNESS: Okay.

18 Q. BY MS. POLK: And if you look at line 6
19 through 10, does that refresh your recollection as
20 to how long it took you to stand on your own?

21 A. It's consistent. Like I said, 5 minutes.
22 It felt like 15, but it could have been 5.

23 Q. How did you feel when you first came out?

24 A. Emotionally I felt very proud.

25 Physically I was drained.

1 Q. Did you tell the detective it was
2 probably coming back from the dead?

3 MR. LI: Objection, Your Honor. Form of the
4 question.

5 THE COURT: Sustained.

6 MR. LI: Move to strike the question.

7 THE COURT: Of course, what the lawyers say is
8 not evidence. What I say is not evidence.

9 Q. BY MS. POLK: When you were interviewed
10 by the detective, did you make a reference to
11 coming back from the dead?

12 MR. LI: Objection. Relevance.

13 THE COURT: Overruled.

14 You may answer that.

15 THE WITNESS: I did say that.

16 Q. BY MS. POLK: What do you recall today
17 about -- if anything, about your reference to
18 coming back from the dead?

19 A. Well, it's a figurative way of saying
20 that I was exhausted and feeling drained physically
21 and that with a little water, I was revived.

22 Q. Were you coherent when you came out?

23 A. Somewhat.

24 Q. Were you coherent when you first came
25 out?

1 A. I knew I was on -- I knew I was on a mat.
2 I knew that there was water on me. I knew there
3 were people on either side of me. I knew both
4 people who were on either side of me and who was
5 talking to me.

6 Q. After retrieving your glasses, what did
7 you do?

8 A. Went to the back of the tent where I knew
9 I was positioned on the inside. I wanted to get my
10 little pouches.

11 Q. And how did you plan to get into the
12 tent?

13 A. I was going to lift it up and -- just
14 lift it up and pull my thing off the branch.

15 Q. Why did you plan to do that instead of
16 going in the door?

17 A. Simplicity, ease, just going direct.

18 Q. Where were you when you first -- where
19 did you go to get your glasses?

20 A. One of the volunteers had them in a
21 backpack. And so somehow we were reunited with my
22 backpack, and I got my glasses.

23 Q. Looking at the exhibit that's on the
24 overhead, what area were you in when you got your
25 glasses?

1 **A. There was a tent set up with oranges and**
 2 **Gatorade and refreshments. And that's where I**
 3 **went.**
 4 **Q.** Did you take from any of the
 5 refreshments?
 6 **A. I did.**
 7 **Q.** At what time?
 8 **A. When I was getting my glasses.**
 9 **Q.** What did you have?
 10 **A. Oranges.**
 11 **Q.** Anything else?
 12 **A. Water.**
 13 **Q.** Did you have any of the electrolyte
 14 water?
 15 **A. I did.**
 16 **Q.** After that, then, you went toward the
 17 tent?
 18 **A. Yes.**
 19 **Q.** Show the jury where you went.
 20 **A. Right behind there. The marking is bad.**
 21 **Q.** So you're trying to draw on the backside
 22 of the tent somewhere?
 23 **A. Yes.**
 24 **Q.** And what happened next?
 25 **A. Well, I stopped because I saw the first**
 62
 1 **thing -- I stopped because I saw the tent was**
 2 **already open. And there was -- there were people**
 3 **there. So it didn't feel that I could go into the**
 4 **tent at that point.**
 5 **Q.** Were you aware prior to walking behind
 6 the tent that the tent had been opened?
 7 **A. No.**
 8 **Q.** And when you came out, were you aware of
 9 any people shouting or any commotion?
 10 **A. When I -- when I came out and was**
 11 **initially on the tarp, yes.**
 12 **Q.** What were you aware of then?
 13 **A. In the distance I heard people asking for**
 14 **help. Nearby I heard someone asking for help for**
 15 **someone else that was on the other side of me.**
 16 **Q.** Do you know who that was?
 17 **A. I understood it to be Tess.**
 18 **Q.** Did you learn that at the time or later?
 19 **A. Later.**
 20 **Q.** How much time do you think had passed
 21 from the time you came out to the time you went to
 22 the back of the tent?
 23 **A. Seven minutes.**
 24 **Q.** Why, Ms. Gordon, at that point did you
 25 want to get your pouches?

1 **A. Because I'd left them in there, and the**
 2 **instructions were to bring your pouches out. And**
 3 **so I had left mine in there. So logically I'm**
 4 **going to go back and get the pouches.**
 5 **Q.** When you went back into the tent to get
 6 your pouches, were you aware of any problems around
 7 you?
 8 **A. I never went back in.**
 9 **Q.** Let me rephrase that. When you headed to
 10 the back of the tent to get your pouches, were you
 11 aware of any problems around you?
 12 **A. I perceived that there was some problems**
 13 **going on.**
 14 **Q.** When you went toward the back of the
 15 tent, did you see someone named Sean?
 16 **A. Yes.**
 17 **Q.** Where did you see Sean?
 18 **A. Again, if this was the back of the tent,**
 19 **right there on the ground on all fours.**
 20 **Q.** And I'll help you because of the
 21 imprecise -- you're talking about the back of the
 22 tent somewhere?
 23 **A. Yes.**
 24 **Q.** And in relationship to the part of the
 25 tent that was open, where did you see Sean?

1 **A. Before it, before the opening.**
 2 **Q.** If I put up on the overhead Exhibit 520,
 3 does this -- are you able to orient yourself and
 4 see where it was that you saw Sean?
 5 **A. My guess would be over here. If that is**
 6 **looking -- I'm assuming this is looking from the**
 7 **entrance into the tent.**
 8 **Q.** Yes.
 9 **A. Yes.**
 10 **Q.** Was Sean awake?
 11 **A. Yes.**
 12 **Q.** And what did you observe about Sean?
 13 **A. It appeared he was throwing up.**
 14 **Q.** And what position do you recall him being
 15 in as he was throwing up?
 16 **A. On his hands and knees.**
 17 **Q.** Do you know what time it was when you
 18 came out of the sweat lodge?
 19 **A. I don't know. I was told later on what**
 20 **time it was, but I did not know.**
 21 **Q.** And what time were you told?
 22 **A. Like, around 4:00.**
 23 **Q.** You were told it was 4:00 when you came
 24 out?
 25 **A. Yes.**

1 Q. Do you believe that to be accurate?
 2 A. **I don't know.**
 3 Q. When you went around to the backside of
 4 the tent, did you see other people out there?
 5 A. **Yes.**
 6 Q. And did you see other people on the
 7 ground?
 8 A. **Yes.**
 9 Q. Did you know at the time who they were?
 10 A. **No.**
 11 Q. Did you learn later who they were?
 12 A. **Yes.**
 13 Q. And who were they?
 14 A. **Kirby and James.**
 15 Q. The last time you saw James Shore, was
 16 he -- what position was he inside the tent?
 17 A. **The last time I saw him, he was up on his**
 18 **right shoulder facing Kirby.**
 19 Q. And when you crawled out of the tent when
 20 the ceremony was over, did you see what position
 21 James was in?
 22 A. **I didn't.**
 23 Q. Do you know today if he was face up or
 24 face down?
 25 A. **I don't know.**

1 Q. I'm going to put up on the overhead
 2 Exhibit 1045.
 3 And you had identified Tess for the jury
 4 yesterday. Will you show her again to the jury.
 5 A. **Sorry.**
 6 Q. I'll circle. Is this Tess?
 7 A. **Yes.**
 8 Q. When the sweat lodge -- well, let me ask
 9 you again. During the ceremony where was Tess
 10 seated?
 11 A. **Initially she was right next to me. And**
 12 **then Mark came and sat between us as a volunteer.**
 13 **And she was on the other side of Mark.**
 14 Q. Do you know how long Tess Wong stayed in
 15 the sweat lodge?
 16 A. **I don't.**
 17 Q. And I said, Tess Wong. Is that her last
 18 name?
 19 A. **That's what I understand.**
 20 Q. Were you ever aware of Tess during the
 21 ceremony?
 22 A. **No.**
 23 Q. Your testimony earlier about somebody to
 24 your right needing help to get out.
 25 A. **Yes.**

1 Q. Did those voices come from the area where
 2 Tess was seated?
 3 A. **No. They were from the -- further away.**
 4 Q. Outside did you become aware of Tess?
 5 A. **Yes.**
 6 Q. And what brought your attention to Tess?
 7 A. **I started just walking and observing, and**
 8 **I saw someone wrapped in a blanket. They had been**
 9 **tended to. They looked like they were -- had been**
 10 **cared for and warm. And when I looked, it appeared**
 11 **to be Tess.**
 12 Q. Were Tess's eyes open or closed?
 13 A. **Open.**
 14 Q. And what did you observe about her eyes?
 15 A. **I observed that the part of the eye that**
 16 **has color in it was very small like just a small**
 17 **dot, not completely round opened. And they were --**
 18 **her eyes were going back and forth from right to**
 19 **left quickly.**
 20 Q. Let me ask you about that. You said the
 21 part of the eye that has the color?
 22 A. **Uh-huh.**
 23 Q. Do you mean the iris?
 24 A. **The part that has the color. That's the**
 25 **iris. Yes.**

1 Q. And that part was small?
 2 A. **Yes.**
 3 Q. And the dark part of the eye, the center
 4 of the eye, the pupil -- did you observe that?
 5 A. **Yes. Because it's part of the eye. So**
 6 **the whole thing, the color part was very, very**
 7 **small and mainly white. Her eyes were mainly**
 8 **white.**
 9 Q. Did you observe anything else about Tess?
 10 A. **No.**
 11 Q. Did you observe any drainage from Tess's
 12 nose, for example?
 13 A. **No.**
 14 Q. Any drainage from her mouth?
 15 A. **Not at that point.**
 16 Q. At some other point did you?
 17 A. **Yes.**
 18 Q. And when was that?
 19 A. **When I was laying face down just as I was**
 20 **being hosed, she was just a person up -- there was**
 21 **one person and another person. And she was on the**
 22 **other side. She had some white coming out of her**
 23 **mouth.**
 24 Q. When you saw her and observed her eyes,
 25 was that white stuff still there?

1 **A. No.**
 2 **Q. It was gone?**
 3 **A. Yes.**
 4 **Q. How long would you say you were near**
 5 **Tess?**
 6 **A. When I was laying next -- well, not**
 7 **directly next to her. But a couple of minutes.**
 8 **And then when I walked and saw her laying there --**
 9 **you know -- in her blanket laying there, just a**
 10 **couple minutes. And then the blanket, maybe 30**
 11 **seconds. Not long.**
 12 **Q. Do you know if Tess was taken away from**
 13 **the area?**
 14 **A. I did not know that then. I learned**
 15 **about it later.**
 16 **Q. And what did you learn?**
 17 **A. That she was in the hospital.**
 18 **Q. Did you go visit Tess in the hospital?**
 19 **A. Did I.**
 20 **Q. When did you go visit her?**
 21 **A. The next morning.**
 22 **Q. Who did you go with?**
 23 **A. Sylvia, Rich, John, and Rosemary.**
 24 **Q. Do you recall John's last name?**
 25 **A. No. I don't remember any of their last**

1 **names in this moment. I have all their last names**
 2 **in my phone. I don't remember.**
 3 **Q. Do you recall if it was John Ebert?**
 4 **A. Yes.**
 5 **Q. And then did you say you went with Sylvia**
 6 **and John and who else?**
 7 **A. Sylvia's husband, Rich, and Rosemary,**
 8 **Rosemary Senjem.**
 9 **Q. Did the five of you drive to the**
 10 **hospital?**
 11 **A. Four of us drove together, and Rosemary**
 12 **and I communicated by cell phone where we were**
 13 **meeting.**
 14 **Q. What hospital did you go to?**
 15 **A. Whatever the -- whatever one she was. I**
 16 **don't know.**
 17 **Q. Does the town of Flagstaff ring a bell**
 18 **with you?**
 19 **A. Yes.**
 20 **Q. Did you visit Tess Wong, then?**
 21 **A. Yes.**
 22 **Q. Did you visit others in the hospital?**
 23 **A. Yes.**
 24 **Q. Who else did you visit?**
 25 **A. Sidney, Liz, Stephen. That's who I**

1 **remember right now.**
 2 **Q. And Tess?**
 3 **A. And Tess.**
 4 **Q. When you visited with Tess, was she**
 5 **alert?**
 6 **A. Yes.**
 7 **MR. LI: Objection, Your Honor. This line of**
 8 **questioning, relevance.**
 9 **THE COURT: Overruled.**
 10 **Q. BY MS. POLK: What day was it that you**
 11 **went to visit these four participants?**
 12 **A. The next day.**
 13 **Q. That would be Friday?**
 14 **A. (No audible response.)**
 15 **Q. And when you visited with Stephen, was he**
 16 **awake?**
 17 **A. I did not see Stephen. There was another**
 18 **participant or a volunteer that would not let us in**
 19 **to see him.**
 20 **Q. Who was that volunteer? Was it a**
 21 **volunteer from --**
 22 **A. From the James Ray event. Maybe Lisa is**
 23 **her name.**
 24 **Q. Do you recall someone named Lisa Rondan?**
 25 **A. I don't know the last name.**

1 **Q. Did you visit Sidney Spencer?**
 2 **A. Yes.**
 3 **Q. And was she awake?**
 4 **A. Yes.**
 5 **Q. Did you visit Liz?**
 6 **A. Yes.**
 7 **Q. Was she awake?**
 8 **A. No.**
 9 **Q. Did you ever visit Stephen Ray again when**
 10 **he was awake?**
 11 **A. No.**
 12 **Q. Outside -- I'm going to take you back to**
 13 **the sweat lodge and after the ceremony was over.**
 14 **Did you become aware of John Ebert there?**
 15 **A. At the tent area?**
 16 **Q. Yes.**
 17 **A. Yes.**
 18 **Q. And what drew your attention to John**
 19 **Ebert?**
 20 **A. We were standing there talking, and I**
 21 **think we were eating oranges together or drinking**
 22 **the water together.**
 23 **Q. Did you learn how John had gotten out of**
 24 **the tent?**
 25 **A. I heard John got out of the tent two**

1 **different times.**

2 **Q.** And who did you hear that from?

3 **A.** **From John.**

4 **Q.** Then John told you he came out two
5 different times?

6 **A.** **Yes.**

7 **Q.** And what did John tell you?

8 **A.** **That he told me that he was told that he**
9 **was --**

10 MR. LI: Objection. This is probably two or
11 three layers of hearsay.

12 THE COURT: Sustained.

13 **Q.** BY MS. POLK: Do you know someone named
14 Kristina Bivins?

15 **A.** **No.**

16 **Q.** When the ceremony was over, was your
17 attention drawn to somebody -- a female on the
18 ground?

19 **A.** **Yes.**

20 **Q.** And what drew your attention to her?

21 **A.** **She was talking in sentences that weren't**
22 **connecting.**

23 **Q.** What did you hear her say?

24 MR. LI: Objection. Hearsay.

25 THE COURT: It might be. Sustained.

1 MS. POLK: It's not offered for the truth,
2 Your Honor.

3 THE COURT: Understanding that it's not
4 offered for the truth, you may answer that.

5 THE WITNESS: Something along the lines -- and
6 it was fragmented so -- and, in my opinion, she was
7 remembering something that had happened in her
8 past. So what -- why did you do this to me was the
9 common words that she was saying that could I make
10 out.

11 **Q.** BY MS. POLK: When you heard her say
12 that, what was her body doing? What did you
13 observe about her physically?

14 **A.** **She appeared to be upset.**

15 **Q.** Was her body moving? Was she moving her
16 arms or legs?

17 **A.** **She had movement in her arms and in her**
18 **body.**

19 **Q.** Do you recall whether she was thrashing
20 on the ground?

21 **A.** **I would not call it "thrashing."**

22 **Q.** Would you take a look at Exhibit 647,
23 page 26, lines 22 to 28. This is your interview
24 with Sergeant Boelts on October 12.

25 MR. LI: What page again?

1 MS. POLK: 26.

2 THE WITNESS: Okay.

3 **Q.** BY MS. POLK: Does this refresh your
4 recollection as to what you told Sergeant Boelts
5 about what you observed?

6 **A.** **Yes.**

7 **Q.** Would you tell the jury what you told
8 Sergeant Boelts.

9 **A.** **That I observed her not being stable.**
10 **And I did use the word "thrashing" in this**
11 **statement here. And she said what I said. Why did**
12 **you do this to me?**

13 **Q.** Did you say that she was still in an
14 altered state?

15 **A.** **I would -- yes.**

16 **Q.** And what do you mean by that?

17 **A.** **That her sentences weren't coherent.**
18 **They weren't connecting. She didn't seem to**
19 **recognize where she was.**

20 **Q.** What does "altered state" mean to you,
21 Ms. Gordon?

22 **A.** **It would mean more a let-go state, more**
23 **not attached to my mind as much, not participating**
24 **in logic but more allowing, more willing.**

25 **Q.** When you saw this lady on the ground

1 saying what you've testified that she said, did you
2 observe what Mr. Ray did?

3 **A.** **Yes.**

4 **Q.** What did he do?

5 **A.** **He went up and held her hand.**

6 **Q.** Did you hear what he said?

7 **A.** **He said things, calling her name and kind**
8 **of shaking her hand and asking for her to wake up**
9 **in some way.**

10 **Q.** Do you recall more specifically what the
11 words were that he used?

12 **A.** **No. But I'm sure they're in 647.**

13 **Q.** Do you recall what tone Mr. Ray used when
14 he was talking to this lady?

15 **A.** **A firm, nice tone.**

16 **Q.** And what do you recall about him saying
17 to wake up?

18 **A.** **I remember him shaking her hand and**
19 **asking her to wake up.**

20 **Q.** Do you recall him using her name?

21 **A.** **Not in this moment I don't.**

22 **Q.** And if you look at 647, page 27, lines 1
23 through 13, see if that helps you remember.

24 **A.** **Yes. He used her name.**

25 **Q.** And what did you tell Sergeant Boelts

1 that Mr. Ray said to her?

2 **A. Wake up, Kristina.**

3 **Q. And did Kristina respond?**

4 **A. She was still in a similar position of --**

5 **the same.**

6 **Q. Do you recall what she said?**

7 **A. No.**

8 **Q. Could you look at Exhibit 647, lines 2**

9 **and 3.**

10 **A. After James said, wake up Kristina. It's**

11 **James. It's okay.**

12 **And she said, James who? And why did**

13 **this happen to me?**

14 **Q. Why did this happen to me?**

15 **A. Uh-huh.**

16 **Q. Did he respond to that?**

17 **A. Same. Wake up. Wake up.**

18 **Q. Did you observe Kristina for very long?**

19 **A. No.**

20 **Q. Where was your attention taken to next?**

21 **A. That's when I turned and saw Tess.**

22 **Q. Okay. How long, Ms. Gordon, were you**

23 **down at the area after the sweat lodge ceremony**

24 **ended?**

25 **A. I can't be -- I don't know for sure.**

1 **Q. Were you there when emergency first**

2 **responders arrived?**

3 **A. Yes.**

4 **Q. I'm going to put up on the overhead**

5 **Exhibit 230.**

6 **Does this look familiar to you?**

7 **A. Yes.**

8 **Q. And were you -- do you believe you were**

9 **there at this time?**

10 **A. I don't think I was there at that time.**

11 **Q. Were you there when the helicopters**

12 **arrived?**

13 **A. Yes. Yes.**

14 **Q. And were you there when any helicopters**

15 **took off?**

16 **A. No.**

17 **Q. What were you doing during the time that**

18 **you've just described and before you left the area?**

19 **A. Would you ask that again, please.**

20 **Q. After your attention was drawn to Tess**

21 **Wong but before you left the area, what else did**

22 **you do at the area?**

23 **A. I was observing, in observation.**

24 **Q. Do you have any idea how long?**

25 **A. I don't.**

1 **Q. Did any medical professionals ever come**

2 **check you out?**

3 **A. Yes. And -- yes.**

4 **Q. When was that?**

5 **A. While I was still there in that area.**

6 **Q. At this scene?**

7 **A. Uh-huh.**

8 **Q. What was your condition when you were**

9 **checked out?**

10 **A. To myself I felt fine.**

11 **Q. What did the -- was it a paramedic who**

12 **checked you out?**

13 **A. I assume. I don't know. I didn't see**

14 **any documents or anything that would say that.**

15 **Q. Do you recall what they did to you when**

16 **they checked you out?**

17 **A. Just asked, how are you feeling?**

18 **Q. When you left the area, where did you go?**

19 **A. To my cabin.**

20 **Q. And what did you do there?**

21 **A. Got my belongings to go get cleaned up.**

22 **We were asked to leave the area and go to the**

23 **dining room.**

24 **Q. Did you go to the dining room?**

25 **A. I got cleaned up and then went to the**

1 **dining room.**

2 **Q. That's when you provided that first**

3 **statement to law enforcement?**

4 **A. Yes.**

5 **Q. What did you do that evening after you**

6 **provided your statement to law enforcement?**

7 **A. Stayed in the dining hall for a little**

8 **while.**

9 **Q. And did you leave at some point to go**

10 **back to bed?**

11 **A. Yes.**

12 **Q. Do you recall what time?**

13 **A. Maybe elevenish, 11:30.**

14 **Q. Do you see Mr. Ray in this photograph?**

15 **A. I'm not sure. This could be him, but I'm**

16 **not sure.**

17 **Q. Did you later that evening see Mr. Ray?**

18 **A. Not for sure.**

19 **Q. Do you think that you saw Mr. Ray later**

20 **that evening?**

21 **A. Yes.**

22 **Q. Where were you when you saw him?**

23 **A. In the dining room.**

24 **Q. And where do you believe you saw Mr. Ray?**

25 **A. I believe and --**

1 MR. LI: Objection. Speculation, also
 2 relevance.
 3 THE COURT: Sustained.
 4 MS. POLK: On speculation, Your Honor, or on
 5 relevance?
 6 THE COURT: Sustained.
 7 Q. BY MS. POLK: Did you see somebody
 8 while -- did you see someone on the outside while
 9 you were --
 10 MR. LI: Your Honor, may I approach?
 11 THE COURT: We've gone 90 minutes now, and we
 12 need to take the recess.
 13 So, ladies and gentlemen, please remember
 14 the admonition. And be back -- I want to start at
 15 11:15. Take about a 15-minute recess before you
 16 get back to the jury room, please.
 17 Ms. Gordon, you're excused for this as
 18 well. Thank you.
 19 (Proceedings continued outside presence
 20 of jury.)
 21 THE COURT: With regard to the grounds,
 22 Ms. Polk, I will tell you the grounds, both of them
 23 at that point. She didn't know. She believed
 24 this. And then in terms of relevance, it's a
 25 postevent. I can say it in that fashion.

1 I know we've had a discussion about what
 2 exactly is the event. But it's afterwards. And
 3 all the things we've talked about through the trial
 4 concerning causation. Anyway, we can discuss this
 5 for a minute.
 6 Ms. Polk, what is it that your --
 7 MS. POLK: Your Honor, I believe it provides
 8 context to the statement that Mr. Ray provided to
 9 Sergeant Barbaro that the jury has already heard
 10 about. What the jury knows is that Mr. Ray had
 11 left the area; and that when Sergeant Barbaro
 12 arrived, at some point he had sent for Mr. Ray.
 13 Mr. Ray came back to the scene.
 14 I believe that what this witness saw was
 15 Mr. Ray now fully dressed heading back down to the
 16 scene or perhaps returning from after that
 17 statement.
 18 THE COURT: Mr. Li.
 19 MR. LI: Your Honor, she would be guessing
 20 about that certainly. The other thing is it's not
 21 clear what the timing is. And there are times when
 22 Mr. Ray is actually in a police car having
 23 exercised his rights.
 24 So he could lead -- first of all, it's
 25 entirely irrelevant. Second of all, there is a

1 foundation issue and a speculation. Third of all,
 2 it might lurch into some area that's, frankly,
 3 extraordinarily not appropriate.
 4 THE COURT: I'm sustaining the objection.
 5 Thank you.
 6 (Recess.)
 7 (Proceedings continued in the presence of
 8 jury.)
 9 THE COURT: The record will show the presence
 10 of Mr. Ray, the attorneys, the jury. Ms. Gordon is
 11 on the witness stand.
 12 Ms. Polk, you may continue.
 13 MS. POLK: Thank you.
 14 Q. Ms. Gordon, I'm going to put back up on
 15 the overhead Exhibit 1045 and ask you questions
 16 about Tess.
 17 Is that Tess?
 18 A. Yes.
 19 Q. After the sweat lodge ceremony was over
 20 and you first saw Tess, is that when you saw
 21 something white coming from her mouth?
 22 A. **When I first came out of the sweat lodge**
 23 **and was laying face down being hosed down, that was**
 24 **the first time I saw her.**
 25 Q. That's when you saw something white

1 coming out of her mouth?
 2 A. Yes.
 3 Q. And how much of the substance did you
 4 see, if you recall?
 5 A. A little.
 6 Q. And then how much time between that and
 7 when you saw Tess wrapped up in a blanket?
 8 A. **Maybe 15 minutes. I'm not sure.**
 9 Q. And when you saw Tess wrapped up in a
 10 blanket, do you recall what her position was?
 11 A. **She was -- she was lying on her left**
 12 **side.**
 13 Q. And at that time did you see anything
 14 coming from her mouth?
 15 A. No.
 16 Q. I had asked you a couple quick questions
 17 about Kristina. And I'm going to put up on the
 18 overhead Exhibit 1050 and ask if you see Kristina
 19 in this photograph?
 20 A. **I don't recognize --**
 21 Q. Do you know who this is?
 22 A. No.
 23 Q. Before you entered the sweat lodge, did
 24 Mr. Ray ever talk to you about any sort of safety
 25 plan?

1 **A. Define "safety plan."**

2 **Q.** Did Mr. Ray ever talk to you about
3 anything concerning the safety of the participants?

4 **A. I don't understand what you describe as a**
5 **safety plan.**

6 **Q.** Did you hear anything from Mr. Ray before
7 you went in the sweat lodge that addressed what you
8 should do if there were problems inside the sweat
9 lodge?

10 **A. Casually, that if someone passed out, the**
11 **understanding from me was that it was okay. And I**
12 **did not hear any specifics about how to pull**
13 **someone out if they needed to be pulled out.**

14 **Q.** With your belief that it was okay to pass
15 out, at what point -- well, let me rephrase that.

16 With your understanding that it was okay
17 to pass out inside the sweat lodge, at some point
18 did you become aware that there were some
19 life-threatening problems?

20 **A. I don't recall a label of life**
21 **threatening, in my mind.**

22 **Q.** After the sweat lodge ceremony was over
23 and you were outside, at that point did you have an
24 understanding that this was what was supposed to
25 happen?

1 **A. Again, no label on what was supposed to**
2 **happen.**

3 **Q.** When you were outside the ceremony
4 observing -- after the ceremony was over, observing
5 what you observed, at that point did you have an
6 expectation one way or another?

7 **A. I did not.**

8 **Q.** And did you know if what was happening at
9 that point was supposed to happen?

10 **A. I did not have an expectation of what it**
11 **would look like at the end.**

12 **Q.** At some point did you recognize that it
13 was a problem?

14 **A. Again, not knowing an expectation, yes.**
15 **There were things that looked like people needed**
16 **attention.**

17 **Q.** At what point did that awareness come to
18 you?

19 **A. When I walked to the back of the tent to**
20 **get the little pouches.**

21 **Q.** What did you see then that makes you
22 testify that you were aware then there was a
23 problem?

24 **A. It appeared two people were getting CPR.**

25 **Q.** You did not go in the back to get your

1 pouch then?

2 **A. I did not.**

3 **Q.** Did you go in the front to get your
4 pouch?

5 **A. I did not get my pouch at all.**

6 **Q.** Whose instruction was it to get the
7 pouches when the sweat lodge ceremony was over?

8 **A. While we were in the sweat lodge and at**
9 **the end of round 8, it was instructed to leave --**
10 **at the time of leaving grab your pouches and leave.**
11 **And that was from James.**

12 **Q.** James Ray?

13 **A. Yes.**

14 **Q.** And is that why you tried to retrieve
15 your pouch?

16 **A. Yes.**

17 **Q.** Were you ever told prior to the
18 commencement of the sweat lodge ceremony that
19 Mr. Ray had medical personnel at the site?

20 **A. Not medical personnel, but volunteers or**
21 **Dream Team.**

22 **Q.** And what were you told about the
23 volunteers or the Dream Team members?

24 **A. Other than they were -- they had a**
25 **presence throughout the whole event. So nothing --**

1 **it was just a given that they were there for**
2 **assistance, in my mind. So I didn't hear anything**
3 **specific if you have -- I didn't hear anything**
4 **specific.**

5 **Q.** Did you ever smell anything inside the
6 sweat lodge?

7 **A. Yes.**

8 **Q.** What did you smell?

9 **A. Incense.**

10 **Q.** And anything else?

11 **A. No.**

12 **Q.** Did you experience physical changes as a
13 result of being inside the sweat lodge?

14 **A. Yes.**

15 **Q.** And tell the jury what physically you
16 experienced.

17 **A. My body got hot, and I sweated.**

18 **Q.** Anything else?

19 **A. I think my heart was beating faster. I**
20 **think I was starting to breathe faster, and I was**
21 **managing breathing. I was slowing down to get --**
22 **to stay calm.**

23 **Q.** How would you describe your heart rate
24 inside the sweat lodge?

25 **A. Faster than normal.**

1 Q. Do you recall describing it as a rapid
2 heart rate to one of the detectives?

3 A. Yes.

4 Q. Would that be accurate?

5 A. Yes.

6 Q. How long did you have a rapid heart rate
7 when you were inside the sweat lodge?

8 A. **I don't know how long.**

9 Q. Did you have a rapid heart rate during
10 the last few rounds?

11 A. **I don't recall that. It seemed that it
12 was midway.**

13 Q. Did you do something to try to manage
14 your heart rate?

15 A. Yes.

16 Q. What did you do?

17 A. **I slowed down my breathing and visually
18 thought of my heart going slower.**

19 Q. Did you get any fresh air at your
20 position in the sweat lodge when the door was open?

21 A. **When the door was open, fresh air came
22 in. I did not feel a breeze come by me, but air
23 did come in.**

24 Q. Did you ever feel any change in air
25 temperature when the door was open?

1 A. No.

2 Q. Did you learn at some point that somebody
3 else was opening the side of the tent where you
4 lay?

5 MR. LI: Objection, Your Honor. Calls for
6 hearsay.

7 THE COURT: Sustained.

8 Q. BY MS. POLK: Were you aware of anybody
9 other -- you testified about Mr. Shore lifting the
10 edge of the tent. Were you aware of anybody else
11 doing that during the sweat lodge ceremony?

12 MR. LI: Calls for hearsay, Your Honor.

13 THE COURT: Said aware. As long as it's
14 phrased in terms of knowledge, Ms. Polk.

15 Q. BY MS. POLK: In term of your own
16 knowledge at the time, were you aware of anyone
17 else lifting the side of the tent?

18 A. **Light did come in at one other time. I
19 don't know who or -- I don't know who or how they
20 let the light in.**

21 Q. You talked about sweating. Do you recall
22 whether Mr. Ray told you during the briefing that
23 you would sweat?

24 A. Yes.

25 Q. What do you recall what Mr. Ray

1 specifically said?

2 A. **He said that you would sweat, and
3 afterwards your skin would feel nice from the
4 sweat.**

5 Q. Do you recall if Mr. Ray during that
6 briefing before you went into the sweat lodge ever
7 talked about purging toxins?

8 A. Yes.

9 Q. What do you recall he said about that?

10 A. **Something along the lines that the
11 sweating will -- will purge toxins.**

12 Q. Do you recall whether in that briefing
13 Mr. Ray ever said that you would be running out of
14 your nose, running out of your pores?

15 A. **I don't remember running out of your
16 nose.**

17 Q. Do you remember the second part of that,
18 that you would have toxins running out of your
19 pores?

20 A. **I don't remember that phrase. I just --
21 the context was that you would be sweating out
22 toxins.**

23 Q. You have told the jury, Ms. Gordon, that
24 you spent a lot of time in saunas. Do you sweat in
25 saunas as well?

1 A. Yes.

2 Q. Are you able to make a comparison to how
3 much you sweat inside the sweat -- how much you
4 sweated inside the sweat lodge on October 8 as
5 compared to your experience in saunas?

6 A. **I think it's an unfair comparison.**

7 Q. And how come?

8 A. **Because the amount of time in a -- what I
9 would do is I'm not in there to push myself in a
10 personal growth environment. So it's a different
11 environment. It's a different context.**

12 Q. How long do you normally stay in a sauna?

13 A. **It depends. It really depends. It can
14 be half an hour. It can be an hour. I could leave
15 and come back, shower, rinse off, and do more.**

16 Q. The saunas that you go into -- do they
17 have warnings posted on the outside?

18 MR. LI: Objection, Your Honor. Relevance.

19 THE COURT: Overruled.

20 THE WITNESS: I don't know.

21 Q. BY MS. POLK: You don't recall whether
22 your sauna has a warning about --

23 A. **I've seen warnings, don't put water due
24 to electrical. Don't put eucalyptus on the rocks.**

25 Q. Have you seen warnings about the length

1 of time you should stay inside the sauna?

2 **A. Not that I recall.**

3 **Q.** Other than the briefing that Mr. Ray
4 provided before you went into the sweat lodge, did
5 he provide any sort of other preparation for you?

6 **A. In relation to?**

7 **Q.** Being prepared to go into this heated
8 environment for two hours.

9 **A. Not anything other than what that I can**
10 **recall in the this moment that we have talked about**
11 **it. Just keeping yourself low because it's cooler**
12 **to the ground, and you're going to sweat.**

13 **Q.** Do you recall, Ms. Gordon, if you signed
14 a waiver before participating in the Spiritual
15 Warrior --

16 **A. I recall I signed a waiver.**

17 **Q.** Do you recall signing two waivers?

18 **A. Yes.**

19 **Q.** One for Angel Valley and one for James
20 Ray International?

21 **A. Yes.**

22 MS. POLK: Your Honor, counsel has agreed to
23 the admission of exhibits 182 and 181.

24 THE COURT: 181 and 182 are admitted.

25 (Exhibits 181 and 182 admitted.)

1 **Q.** BY MS. POLK: And I'll put on the
2 overhead, Ms. Gordon, Exhibit 181.

3 Is that your signature?

4 **A. Yes.**

5 **Q.** And I'm going to put up the first page of
6 the release and waiver of liability.

7 Did you read the waiver before you signed
8 it?

9 **A. I did.**

10 **Q.** And had you seen a similar waiver for the
11 other events that you attended put on by Mr. Ray?

12 **A. Yes.**

13 **Q.** When did you read the waiver?

14 **A. When I -- I believe I received an email**
15 **during -- couple months prior to the event.**

16 **Q.** Do you recall reading specifically about
17 a sweat lodge -- sweat lodge ceremonial -- a
18 ceremonial sauna involving tight, enclosed spaces
19 and intense temperatures?

20 **A. Yes.**

21 **Q.** Do you recall reading specifically that
22 the release included physical, emotional,
23 psychological or otherwise or property or resulting
24 in death?

25 **A. Yes.**

1 **Q.** And at the time that you read and signed
2 that, did you believe that participating in the
3 sweat lodge could result in death?

4 **A. I believed that any of those things could**
5 **result in death.**

6 **Q.** And why did you believe that?

7 **A. Because it was disclosed.**

8 **Q.** Was it because of the waiver you believed
9 that they could result in death?

10 **A. Yes.**

11 **Q.** Did you trust Mr. Ray?

12 **A. Yes.**

13 **Q.** And inside the sweat lodge did you trust
14 Mr. Ray?

15 **A. Yes.**

16 **Q.** Did you trust that he would keep you
17 safe?

18 **A. Yes.**

19 **Q.** And you talked about an altered state.

20 Did you experience an altered state inside the
21 sweat lodge?

22 **A. Yes.**

23 **Q.** And will you tell us what you
24 experienced.

25 **A. Physically I felt lethargic. I**

1 **experienced different thoughts that would pass**
2 **through my mind. I experienced sensations in my**
3 **body.**

4 **Q.** You're aware that in the area where you
5 sat during -- throughout the sweat lodge ceremony
6 two people died and a third person was pulled out
7 and air evacuated to Flagstaff. Do you know why you
8 survived it and they did not?

9 MR. LI: Objection. Calls for speculation,
10 Your Honor.

11 THE COURT: Sustained.

12 **Q.** BY MS. POLK: Have you formed an opinion,
13 Ms. Gordon, as to why you were less affected than
14 the three people I've just described?

15 MR. LI: Same objection, Your Honor.

16 THE COURT: Sustained.

17 **Q.** BY MS. POLK: Did you get to know Kirby
18 Brown during Spiritual Warrior 2009?

19 **A. Just surface.**

20 **Q.** Just --

21 **A. I didn't know, know her. I just spent a**
22 **little time with her.**

23 **Q.** Had you made some plans to see her after
24 the week was over?

25 **A. It was discussed. Yes.**

1 Q. And what had you planned to do?

2 A. **She was going to come to my home and**
3 **paint a mural or wall of certain colors that I**
4 **wanted.**

5 Q. Inside your home?

6 A. **Yes.**

7 Q. And did you understand that to be her
8 profession?

9 A. **Yes.**

10 Q. Specifically what were you going to have
11 her do?

12 MR. LI: Objection, Your Honor. Relevance.

13 THE COURT: Sustained.

14 Q. BY MS. POLK: After the events of October
15 of 2009, have you continued to receive
16 communications from Mr. Ray or his company?

17 A. **Yes.**

18 Q. And have you communicated back with him?

19 A. **Not directly. I've read the emails that**
20 **come.**

21 Q. And explain to the jury what these emails
22 are that you've been receiving.

23 A. **Conversations about different aspects of**
24 **personal growth or business developments and**
25 **various degrees.**

1 Q. How frequently do these emails come?

2 MR. LI: Objection, Your Honor. Relevance.

3 THE COURT: Sustained.

4 Q. BY MS. POLK: Do you consider yourself,
5 Ms. Gordon, to be a follower of Mr. Ray?

6 A. **Not a follower. That word doesn't fit**
7 **for me.**

8 Q. What word would fit for you?

9 A. **A resource.**

10 Q. That Mr. Ray is a resource?

11 A. **Uh-huh.**

12 Q. And in what way?

13 A. **He has tremendous knowledge that -- and**
14 **wisdom that hopefully that I'm able to learn from**
15 **and maybe shave a few mistakes off in my life and**
16 **learn. So it's a resource for me.**

17 Q. And do you feel that you've learned from
18 Mr. Ray from the other seminars that you attended?

19 A. **Absolutely.**

20 Q. And did you learn from Mr. Ray from
21 Spiritual Warrior 2009 event?

22 A. **Absolutely.**

23 Q. The place that you had in the sweat lodge
24 and the events that you've described for the jury
25 yesterday and today -- have you been traumatized by

1 these events?

2 A. **I don't believe so.**

3 Q. Would you expect to be traumatized by the
4 events that you've described?

5 MR. LI: Objection, Your Honor.

6 Argumentative. I'm not sure if it's a clinical
7 diagnosis.

8 THE COURT: Sustained.

9 Q. BY MS. POLK: And how do you feel about
10 your experience inside the sweat lodge and your
11 location next to the victims that you've described?

12 MR. LI: Your Honor, relevance.

13 THE COURT: Overruled.

14 THE WITNESS: I have several feelings and
15 emotions and thoughts about it. Discussing it
16 is -- I find myself feeling sad for the events that
17 happened for people that were hurt. I feel sad for
18 the actual ceremony itself. It didn't have a
19 chance to complete, that the opportunity for the
20 completion and the full learning of the entire week
21 that so much endeavor went into.

22 I have curiosity of the whole thing, how
23 it unfolded, from a spiritual standpoint. And I'm
24 still seeking for my own learning out of the
25 experience for myself and, again, how to be that

1 person that I want to be in life and how I want to
2 show up.

3 I have all of that going on. And I'm --
4 and I have gratitude. I have a lot going on about
5 it.

6 Q. BY MS. POLK: I understand. You had
7 described yesterday for the jury when you came out
8 feeling proud that you had accomplished what you
9 accomplished. Did that feeling remain?

10 A. **No.**

11 Q. And explain to us that.

12 A. **Before I knew -- okay. So coming out and**
13 **getting hosed off and being revived back, I felt**
14 **very proud of myself. It was to me a difficult**
15 **thing. And I was nervous going into it. And I**
16 **felt I managed myself in a way that I maybe never I**
17 **imagined I could.**

18 **So there was a sense of personal pride.**
19 **I was feeling proud. And I looked to the person**
20 **next to me, and I shared that. And she took a**
21 **moment and said yes. She felt that way as well.**
22 **And we were just kind of giggling in that.**

23 **And then as my awareness expanded out**
24 **from just me and this conversation here, I started**
25 **hearing things around me that weren't in that vein**

1 of being elated. I withheld my feeling of that and
2 no longer shared it. It felt inappropriate.

3 Q. Thank you, Ms. Gordon.

4 Thank you, Your Honor.

5 THE COURT: Thank you, Counsel.

6 Mr. Li, cross-examination?

7 MR. LI: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. LI:

10 Q. Good morning, Ms. Gordon.

11 A. Good morning.

12 Q. You are a witness that was called by the
13 State of Arizona; correct?

14 A. Yes.

15 Q. And you received letters and other
16 communications and a subpoena from the State of
17 Arizona to come testify at this trial?

18 A. Yes.

19 Q. You did not receive a letter or a
20 subpoena or something like that from Mr. Ray or me
21 or anything like that to come testify?

22 A. No.

23 Q. So you are, essentially, a state's
24 witness; correct?

25 A. Yes.

1 Q. Now, I've spoken to you twice; correct?

2 A. Yes.

3 Q. One time was probably back in March maybe
4 when you had been called down here by the state?

5 A. Yes.

6 Q. And we spoke with Mr. Hughes present;
7 correct?

8 A. Yes.

9 Q. And we spoke for probably about five,
10 six, or seven minutes just to introduce myself and
11 play a particular tape; correct?

12 A. Yes.

13 Q. And then we met again and talked
14 yesterday over in that building over there?

15 A. Yes.

16 Q. For about 30 or 40 minutes, give or take?

17 A. Yes.

18 Q. And Ms. Polk was present at that meeting
19 as well; correct?

20 A. Yes.

21 Q. As was Detective Diskin?

22 A. Yes.

23 Q. And I believe Detective Diskin was having
24 lunch while we were talking. Correct?

25 A. Yes.

1 Q. Now -- and I guess I probably sent you a
2 couple of emails trying to coordinate those
3 meetings?

4 A. Yes.

5 Q. And I think I left you a message on your
6 phone once saying maybe we could meet and discuss
7 some of the facts of the case. Correct?

8 A. Yes.

9 Q. And that's the total of our
10 communication; right?

11 A. Yes.

12 Q. Now, Ms. Polk asked you some questions
13 about Mr. Ray's company sending you -- actually she
14 said from Mr. Ray. These emails, they're actually
15 from Mr. Ray's company; correct?

16 A. Yes.

17 Q. And what we're talking about here are
18 what I would call "blast emails", which are emails
19 sent out to a lot of folks. Correct?

20 A. Yes.

21 Q. And they are live each day to the
22 fullest. Those kinds of emails; correct?

23 A. Yes.

24 Q. They're not communications personally?
25 Dear Ms. Gordon, checking in on you?

1 A. No.

2 Q. So they're not personal emails; correct?

3 A. No.

4 Q. These are not personal communications
5 between you, James Ray, James Ray International,
6 anything like that; correct?

7 A. No.

8 Q. In fact, I believe you told Ms. Polk
9 yesterday that the last time you had a conversation
10 with Mr. Ray was maybe the day before the sweat
11 lodge ceremony in October 2009, almost 17, 18
12 months ago. Correct?

13 A. Yes.

14 Q. Let me ask a couple of difficult
15 questions, if I could. You had testified earlier
16 with Ms. Polk that when you left the sweat lodge,
17 you felt elated; correct?

18 A. I felt proud.

19 Q. Proud. Sorry. And you felt a sense of
20 accomplishment?

21 A. Yes.

22 Q. And you shared those feelings with other
23 participants who were outside with that sense of
24 accomplishment?

25 A. Yes.

- 1 Q. Do you remember seeing -- do you know
2 Jean Armstrong, Dr. Jean Armstrong? Did you know a
3 participant named Dr. Jean Armstrong?
4 A. **I heard that there was a doctor, but I**
5 **don't know.**
6 Q. Okay. Did you see a woman come out with
7 that sort of a gesture?
8 A. **I did not.**
9 Q. Did you feel as you came out the kind
10 of -- that sort of feeling?
11 A. **Yes.**
12 Q. Because it was a big accomplishment?
13 A. **Yes.**
14 Q. Have you run races before -- 10Ks,
15 marathons?
16 A. **No.**
17 Q. Did it feel like your personal marathon
18 though?
19 A. **Yes.**
20 Q. Big sense of accomplishment?
21 A. **Yes.**
22 Q. And on your way out in the eighth round
23 when it was finished, you waited; correct?
24 A. **Yes.**
25 Q. And Mr. Shore and Ms. Brown were not

- 1 moving, and you didn't know why; correct?
2 A. **I did not observe if they were moving or**
3 **not moving for sure.**
4 Q. I apologize. What I mean to say is they
5 weren't exiting?
6 A. **Right.**
7 Q. I want to be precise in my language. I
8 don't mean whether their bodies were moving at all.
9 I mean that they were not exiting the sweat lodge.
10 A. **Right. They were not leaving.**
11 Q. And you were wondering to yourself why
12 aren't they leaving?
13 A. **I didn't experience anybody in front of**
14 **me leaving.**
15 Q. I see. So then you scooted out between
16 their feet and the fire pit?
17 A. **Yes.**
18 Q. Or the rock pit; correct? Now -- and we
19 all know now that it turns out that they have
20 passed away?
21 A. **Yes.**
22 Q. And -- you know. And you have been, as
23 Ms. Polk asked you, processing this for the last
24 almost two years; correct?
25 A. **Yes.**

- 1 Q. Emotionally?
2 A. **Yes.**
3 Q. And yesterday when we talked about it,
4 there was a little bit of emotion?
5 A. **Yes.**
6 Q. And it's difficult?
7 A. **Yes.**
8 Q. And you did not know, did you, that
9 either James Shore or Kirby Brown was dying?
10 A. **No. I did not know that.**
11 Q. You did not know that James Shore or
12 Kirby Brown would end up dead, did you?
13 A. **No.**
14 Q. Nobody knew?
15 MS. POLK: Objection. Foundation.
16 THE COURT: Sustained.
17 Q. BY MR. LI: Nobody around you said -- you
18 didn't hear anybody around you say Kirby Brown or
19 James Shore were dying, did you?
20 A. **No.**
21 Q. You didn't hear Mark Rock, the Dream Team
22 member -- you didn't hear him say Kirby Brown just
23 breathed her last breath, did you?
24 A. **No.**
25 Q. You didn't hear Mark Rock say James Shore

- 1 is dying, did you?
2 A. **No.**
3 Q. You didn't hear anybody else say that
4 either, did you?
5 A. **Huh-uh.**
6 Q. So is it fair to say that nobody around
7 you knew that those folks were dying?
8 MS. POLK: Objection. Speculation.
9 THE COURT: Sustained.
10 Q. BY MR. LI: Well, you didn't hear anybody
11 say that, did you?
12 A. **No, I did not.**
13 Q. And you yourself didn't know?
14 A. **No.**
15 Q. And you were --
16 May I approach, Your Honor?
17 THE COURT: You may.
18 Q. BY MR. LI: You were this close to
19 Ms. Brown, were you not?
20 A. **Maybe just a little bit further.**
21 Q. This close. And I'm going to, just for
22 the record, say that's about 30 inches, two feet,
23 give or take?
24 A. **Uh-huh.**
25 Q. And you didn't know that she was dying?

1 **A. No.**
 2 **Q.** And Mr. Shore --
 3 If I may, Your Honor.
 4 THE COURT: Yes.
 5 **Q.** BY MR. LI: Mr. Shore was on this side of
 6 you. And, for the record, I'm standing on her left
 7 side.
 8 **A. They were both on this side.**
 9 **Q.** I'm sorry. Okay. So -- I apologize.
 10 Ms. Brown was here at the very end?
 11 **A. Yes.**
 12 **Q.** And then Mr. Shore was standing somewhere
 13 around -- or on his elbow around here --
 14 correct? -- all the way to the eighth round?
 15 **A. Yes.**
 16 **Q.** And you saw him on his elbow?
 17 **A. Yes.**
 18 **Q.** And you were probably -- is that about
 19 three or four feet from Mr. Shore?
 20 **A. Yes.**
 21 **Q.** And he was actually lying on his side on
 22 his elbow?
 23 **A. Yes.**
 24 **Q.** And he was looking over at Ms. Brown and
 25 he was talking to her?

1 **A. Yes.**
 2 **Q.** And he was saying sweet things to her?
 3 You can do it. Hang in there. We're almost there.
 4 Things like that?
 5 **A. Yes.**
 6 **Q.** Keep breathing?
 7 **A. Yes.**
 8 **Q.** And you didn't know he was dying, did
 9 you?
 10 **A. No.**
 11 MS. POLK: Your Honor, could counsel return
 12 back to the podium.
 13 THE COURT: Yes.
 14 **Q.** BY MR. LI: I want to ask you a few
 15 questions about keep breathing. When you're in a
 16 sauna and it's really hot and you want to calm
 17 yourself down and just get into the moment, do you
 18 tell yourself to keep breathing? breathe slow?
 19 control your breathing?
 20 **A. Sometimes.**
 21 **Q.** Okay. Let me pick another exercise. I
 22 don't know if you do yoga. I can't touch my toes.
 23 But if you do something like yoga, you hear people
 24 say -- you know -- breathe?
 25 **A. Uh-huh.**

1 **Q.** And that helps you get into a deeper
 2 stretch?
 3 **A. Yes.**
 4 **Q.** I don't know if you've lifted weights or
 5 anything like that. You've got to breathe?
 6 **A. Right.**
 7 **Q.** And it's a way of calming your body;
 8 correct?
 9 **A. Yes.**
 10 **Q.** And it's a way of getting your mental
 11 energy together, to get yourself in the best
 12 position to succeed?
 13 **A. Yes.**
 14 **Q.** Correct? Do you give presentations to
 15 people?
 16 **A. Yes.**
 17 **Q.** Okay. I do too. And do you ever --
 18 before you give a presentation to somebody, talk to
 19 some folks, take some deep breaths?
 20 **A. Yes, I do.**
 21 **Q.** To center yourself?
 22 **A. Yes.**
 23 **Q.** If it's a big presentation, you really
 24 focus on your breathing?
 25 **A. Yes.**

1 **Q.** Do you tell yourself when you want to --
 2 for instance, when you needed to calm your heart
 3 rate -- remember Ms. Polk asked you some questions
 4 about your heart rate? Do you remember that?
 5 **A. Yes.**
 6 **Q.** When you want to calm your heart rate, do
 7 you tell yourself breathe slowly? control your
 8 breathing? bring it all down?
 9 **A. Yes.**
 10 **Q.** And I don't know if you have, but I have
 11 found that I can lower my pulse by just breathing.
 12 **A. Yes.**
 13 **Q.** Have you found that?
 14 **A. Yes, I have.**
 15 **Q.** And when you were talking to Ms. Brown,
 16 and not knowing that there was anything wrong with
 17 her -- and I believe on direct you testified that
 18 you didn't -- when you said, keep breathing, you
 19 weren't thinking keep breathing because you're
 20 going to stop breathing, were you?
 21 **A. Right.**
 22 **Q.** You weren't thinking you're dying, so
 23 keep breathing? It wasn't that, was it?
 24 **A. No.**
 25 **Q.** It was -- what was it?

1 **A. To stay calm and to center your energy,**
 2 **to stay in that calmness.**
 3 **Q.** Because it works for you?
 4 **A. Yes.**
 5 **Q.** And you probably had yoga instructors and
 6 if you had a trainer or whatever, tell you,
 7 breathe; correct?
 8 **A. Yes.**
 9 **Q.** Ms. Gordon, you are a financial advisor?
 10 **A. Yes.**
 11 **Q.** And you have your Series 7 license?
 12 **A. Yes.**
 13 **Q.** And that permits you to, essentially, be
 14 a securities broker?
 15 **A. Yes.**
 16 **Q.** Correct? And I'm not asking for any
 17 tips. But do you have a sort of investment
 18 strategy, that sort of thing?
 19 **A. Yes.**
 20 **Q.** And you share that with people, do you
 21 not?
 22 **A. I do.**
 23 **Q.** And just in broad strokes, what is your
 24 investment strategy? If you were telling folks who
 25 are planning for their retirement or what have you,

1 what in general would that strategy be?
 2 **A. Every situation is different.**
 3 **Q.** Understood.
 4 **A. Certainly the broad stroke would be to**
 5 **underspend and oversave. And then depending on**
 6 **risk tolerance, having things that fit their**
 7 **objectives of meeting income or growth or passing**
 8 **on to family members different strategies,**
 9 **instructions for each of those objectives.**
 10 **Q.** And what you do with your clients is you
 11 sit down with each of them and you ask them what
 12 are your strategies? What do you want? Where do
 13 you want to be in 5 years? 10 years? 15?
 14 **A. Uh-huh.**
 15 **Q.** Yes?
 16 **A. Yes.**
 17 **Q.** And then you help them plan?
 18 **A. Yes.**
 19 **Q.** And you disclose to them -- you say,
 20 look. If you have a big appetite for risk -- you
 21 know -- Czechoslovakia has -- I don't know what
 22 you -- but if you have a big appetite for risk, you
 23 go for the risky endeavors; correct?
 24 **A. I don't do it just like that. More**
 25 **conservative. But yes. There is a risk tolerance.**

1 **I match it with their values so that we're**
 2 **constantly going towards what's important about**
 3 **them versus a huge rate of return and risk. We're**
 4 **managing the values and the goals first.**
 5 **Q.** And then you crunch the numbers?
 6 **A. Yes.**
 7 **Q.** Because you can have all the goals you
 8 want, but if you don't have the capital or -- you
 9 know -- maybe that capital will never reach that
 10 particular goal or maybe you have more than enough
 11 capital to reach that goal. But you have to crunch
 12 the numbers; right?
 13 **A. Yes.**
 14 **Q.** So this is a sophisticated analysis of
 15 both what a person's objectives are; correct?
 16 **A. Yes.**
 17 **Q.** And what their means and abilities are;
 18 correct?
 19 **A. Yes.**
 20 **Q.** And so you meld those two; correct?
 21 **A. Yes.**
 22 **Q.** And then your clients who trust you
 23 listen to you, and you help advise them in that
 24 regard?
 25 **A. Yes.**

1 **Q.** This is not -- let me ask you a question.
 2 I believe you said that Mr. Ray is a resource?
 3 **A. Yes.**
 4 **Q.** And that his books and his seminars and
 5 what have you are resources?
 6 **A. Yes.**
 7 **Q.** You have other resources too; correct?
 8 **A. Yes.**
 9 **Q.** And these are resources that help you
 10 have confidence; correct?
 11 **A. Yes.**
 12 **Q.** Get rid of the stuff that holds you back;
 13 correct?
 14 **A. Yes.**
 15 **Q.** And be -- as you said on direct, be the
 16 best person that you can actually be?
 17 **A. Yes.**
 18 **Q.** And it's not just Mr. Ray; correct?
 19 **A. Correct.**
 20 **Q.** And I believe you were fairly explicit
 21 with Ms. Polk that you're not a follower?
 22 **A. Correct.**
 23 **Q.** Now, you may have heard in the media
 24 about cults and followers and all of that. Do any
 25 of those labels apply to you?

1 **A. No.**
 2 MR. LI: Your Honor, would this be a good
 3 time?
 4 THE COURT: It would. Thank you, Mr. Li.
 5 Members of the jury, we will take the
 6 noon recess at this time. Remember the admonition,
 7 of course. And please be reassembled at the usual
 8 time, 1:30.
 9 Ms. Gordon, you're excused at this time
 10 as well. Recall the rule of exclusion I have
 11 talked to you about.
 12 Thank you. We're in recess.
 13 (Recess.)
 14 THE COURT: The record will show the presence
 15 of Mr. Ray, the attorneys, the jury. And
 16 Ms. Gordon has returned to the witness stand.
 17 Mr. Li.
 18 MR. LI: Thank you, Your Honor.
 19 **Q. Good afternoon, Ms. Gordon.**
 20 **A. Good afternoon.**
 21 **Q. Now, before the break we confirmed that**
 22 **you had been called by the state to testify; right?**
 23 **A. Yes.**
 24 **Q. And if you could just move the mic a tiny**
 25 **bit forward.**

1 And on direct Ms. Polk had pointed out
 2 the fact that you had used different words to
 3 describe how Mr. Shore was talking inside the sweat
 4 lodge.
 5 Do you recall that?
 6 **A. Yes.**
 7 **Q. So, for instance --**
 8 **If I may approach, Your Honor?**
 9 THE COURT: Yes.
 10 **Q. BY MR. LI: On October 12, 2009 -- I'm**
 11 **referencing page 4 of Exhibit 647 -- you had used**
 12 **the term, James yelled?**
 13 **A. Uh-huh.**
 14 **Q. I need help?**
 15 **A. Uh-huh.**
 16 **Q. And then, now referencing Exhibit 695 at**
 17 **page 10 and 11, you had told the police on**
 18 **October 8, the night of the accident, that**
 19 **Mr. Shore had used a matter-of-fact tone?**
 20 **A. Yes.**
 21 **Q. And that it was not strong, it was not**
 22 **stated out strongly?**
 23 **A. Right.**
 24 **Q. And that the words were, we need help**
 25 **over here?**

1 **A. Yes.**
 2 **Q. And just to confirm that, you're**
 3 **reviewing the transcript?**
 4 **A. Yes.**
 5 **Q. And that's what you said?**
 6 **A. Yes.**
 7 **Q. And today when you testified to this**
 8 **jury, you said that he was talking -- sorry. Not**
 9 **talking but not loud when describing the tone of**
 10 **his voice?**
 11 **A. Yes.**
 12 **Q. Not just talking, not loud?**
 13 **A. Right. More than talking but not**
 14 **yelling.**
 15 **Q. Okay. And I believe yesterday on direct**
 16 **examination when Ms. Polk was asking you questions,**
 17 **you said he was not projecting?**
 18 **A. Correct.**
 19 **Q. Okay. So you've used different words to**
 20 **describe the tone and the volume of the voice that**
 21 **Mr. Shore used inside the sweat lodge to say we**
 22 **need help here?**
 23 **A. Yes.**
 24 **Q. And just today is it your testimony that**
 25 **he did not project?**

1 **A. Right.**
 2 **Q. That he did not yell?**
 3 **A. Right.**
 4 **Q. Now, I believe Ms. Polk was demonstrating**
 5 **or attempting to demonstrate to this jury that you**
 6 **had used inconsistent language. Correct?**
 7 MS. POLK: Your Honor, objection.
 8 THE COURT: Sustained.
 9 **Q. BY MR. LI: Is your testimony today the**
 10 **result of recovering a repressed memory? It is**
 11 **not, is it?**
 12 **A. I don't think so.**
 13 **Q. You don't even know what I'm talking**
 14 **about?**
 15 **A. No, I don't.**
 16 **Q. And you're not recovering some repressed**
 17 **memory here to tell the jury what you now remember,**
 18 **are you?**
 19 **A. I'm just telling you what I remember.**
 20 **Q. You're just doing the best you can to**
 21 **tell the truth?**
 22 **A. Yes.**
 23 **Q. Now, I'm going to put on the projector**
 24 **here Exhibit 1070. This is a document -- you can**
 25 **take a look -- in which the State of Arizona by and**

1 through Sheila Sullivan Polk, Yavapai County
 2 attorney, request immunity for Mr. Rock -- use
 3 immunity.
 4 Did you get one of these?
 5 **A. No.**
 6 **Q.** The State of Arizona did not ask this
 7 court to give you use immunity, did they?
 8 **A. No.**
 9 **Q.** Ma'am, you were not a member of the Dream
 10 Team, were you?
 11 **A. No.**
 12 **Q.** Mark Rock was a member of the Dream Team,
 13 wasn't he?
 14 **A. Yes.**
 15 **Q.** I'm putting on the projector Exhibit 189,
 16 Bates 2506.
 17 Can you read that under sweat lodge --
 18 you see this section here where it says, under
 19 sweat lodge? You don't have to read it aloud. But
 20 can you see it?
 21 Can members of the jury see that?
 22 **A. Okay.**
 23 **Q.** So you have testified under direct that
 24 you were focused on yourself?
 25 **A. Yes.**

1 **Q.** You were a participant?
 2 **A. Yes.**
 3 **Q.** That was the purpose of you going there?
 4 **A. Yes.**
 5 **Q.** You were there to engage in personal
 6 growth; correct?
 7 **A. Yes.**
 8 **Q.** To find some boundaries and see if you
 9 could exceed them; correct?
 10 **A. Yes.**
 11 **Q.** To become a better person?
 12 **A. Yes.**
 13 **Q.** And you committed at the beginning of
 14 this seminar to work on whatever issues there are.
 15 We don't need to know them. But whatever the
 16 issues were and overcome them?
 17 **A. Yes.**
 18 **Q.** You were not there, were you, ma'am, to
 19 assist participants as they enter and exit the
 20 sweat lodge?
 21 **A. No.**
 22 **Q.** You were not there to remain -- if you
 23 are inside the sweat lodge, you were not there to
 24 remain alert and ready to help the entire time?
 25 **A. No.**

1 **Q.** You told there was to be as a
 2 participant; correct?
 3 **A. Yes.**
 4 **Q.** And to do the ceremony?
 5 **A. Yes.**
 6 **Q.** And now, in fact, while you were -- you
 7 might be being a little hard on yourself. But
 8 while you were in the sweat lodge, you did help
 9 people; correct?
 10 **A. Yes.**
 11 **Q.** I'll be more -- I'll be more direct. You
 12 helped Ms. Spencer?
 13 **A. Yes.**
 14 **Q.** You helped Mr. Shore help Ms. Spencer
 15 out?
 16 **A. Yes.**
 17 **Q.** Did you see Mark Rock get up and help?
 18 **A. No.**
 19 **Q.** Okay. You did help Ms. Brown, Kirby
 20 Brown?
 21 **A. Yes.**
 22 **Q.** Correct? And she was breathing, and she
 23 was on her back?
 24 **A. Yes.**
 25 **Q.** And she was gurgling, like, with a lot of

1 fluid?
 2 **A. Yes.**
 3 **Q.** And your testimony yesterday to Ms. Polk
 4 was that it sounded like -- you know -- when you
 5 have a cold and you're lying on your back; correct?
 6 **A. Yes.**
 7 **Q.** And that it's very uncomfortable to lie
 8 on your back when you have a cold and things are
 9 draining; correct?
 10 **A. Yes.**
 11 **Q.** Into your throat?
 12 **A. Yes.**
 13 **Q.** And so you and Mr. Shore helped push
 14 Kirby Brown onto her side?
 15 **A. Yes.**
 16 **Q.** And the two of you, Mr. Shore and
 17 yourself, you had a conversation about hey. Let's
 18 help Kirby out. Correct?
 19 **A. Yes.**
 20 **Q.** And both of you collectively decided
 21 we're going to help her out, and we're going to
 22 roll her up on her side so she can breathe easier;
 23 correct?
 24 **A. Yes.**
 25 **Q.** So you helped her?

1 **A. Yes.**
 2 **Q.** And then Mr. Shore held her hand during
 3 the -- I'm sorry. You don't -- do you know whether
 4 he held her hand?
 5 **A. I don't know that.**
 6 **Q.** He held her hand. Mr. Shore, though,
 7 talked to her?
 8 **A. Yes.**
 9 **Q.** And he tried to help her throughout the
 10 ceremony?
 11 **A. Yes.**
 12 **Q.** And he said, you can do this?
 13 **A. Yes.**
 14 **Q.** Hang in there?
 15 **A. Yes.**
 16 **Q.** Keep breathing?
 17 **A. Yes.**
 18 **Q.** We're going to get through this?
 19 **A. Yes.**
 20 **Q.** And I believe your opinion is that at
 21 some point he attempted to lift up the side of the
 22 tent?
 23 **A. That's my opinion.**
 24 **Q.** But you don't actually know one way or
 25 the other?

1 **A. No.**
 2 **Q.** Did you see Mark Rock go over to Kirby
 3 Brown and try to help?
 4 **A. I did not.**
 5 **Q.** Did you see Mark Rock or hear Mark Rock
 6 talk to you about helping Kirby Brown?
 7 **A. No.**
 8 **Q.** Even while the breathing was taking
 9 place?
 10 **A. Correct.**
 11 **Q.** Did you hear Mark Rock say, I believe
 12 I've just heard Kirby Brown's last breath, like you
 13 hear on TV? Can we help her out?
 14 Did you hear that?
 15 **A. No.**
 16 **Q.** Did Mark Rock, as a Dream Team member, go
 17 over and try to push Kirby Brown onto her side so
 18 she could breathe easier?
 19 **A. No.**
 20 **Q.** Did Mark Rock go over to Kirby Brown and
 21 say are you okay?
 22 **A. No.**
 23 **Q.** Did Mark Rock say you can do this? You
 24 can do this?
 25 **A. No.**

1 **Q.** Did Mark Rock say hey, we got a problem
 2 over here?
 3 **A. No.**
 4 **Q.** Now, Ms. Polk, through the use of the
 5 transcript identified that you had used different
 6 words to describe how Mr. Shore said he needed
 7 help; correct?
 8 **A. Yes.**
 9 **Q.** And you remember that testimony?
 10 **A. Yes.**
 11 **Q.** But you have not been offered some kind
 12 of petition for use immunity from prosecution, have
 13 you?
 14 **A. No.**
 15 **Q.** You know the difference, do you not,
 16 between an inconsistency, using different words,
 17 and lying?
 18 **A. Yes.**
 19 **Q.** I want to focus for a second on why you
 20 went to the Spiritual Warrior seminar and why you
 21 did some of these other courses.
 22 **A. Okay.**
 23 **Q.** If we could for a minute. Now, you
 24 attended JRI events because Mr. Ray has a wealth of
 25 information; correct?

1 **A. Yes.**
 2 **Q.** He takes all kind of philosophies,
 3 religions, science, whatever, pulls it together and
 4 finds common themes; correct?
 5 **A. Yes.**
 6 **Q.** And some of them are useful to you?
 7 **A. Yes.**
 8 **Q.** Some of them aren't, are not useful?
 9 **A. I haven't found that to be the case yet.**
 10 **Q.** Okay. Most of them are useful?
 11 **A. Yes.**
 12 **Q.** Now, I believe at some point you said
 13 it's practical. It's not fufu, like going to sit
 14 in your living room and burning incense?
 15 **A. Correct.**
 16 **Q.** It's not -- you know -- if you meditate
 17 long enough, you'll find enlightenment and you
 18 won't have to eat, sleep, drink, or work for a
 19 living anymore, is it?
 20 **A. I don't understand the question.**
 21 **Q.** Sorry. Bad question, then. Mr. Ray's
 22 philosophy or Mr. Ray's sort of lectures do not
 23 tell you that if you meditate long enough that
 24 you're going to find some kind of enlightenment?
 25 **A. Correct.**

- 1 Q. And they're not about oh, you'll never
2 have to work again?
- 3 A. **Correct.**
- 4 Q. In fact, they're about if you're going to
5 commit to something, you're going to have to work
6 to achieve it; correct?
- 7 A. **Yes.**
- 8 Q. It's not just oh, think it and it will
9 happen, is it?
- 10 A. **No.**
- 11 Q. It's I got -- if I want to do something,
12 if I want to be a good partner in my business or my
13 marriage, I got to commit to it; correct?
- 14 A. **Yes.**
- 15 Q. And I've got to -- and commitment doesn't
16 mean some set of words. It means action; correct?
- 17 A. **Yes.**
- 18 Q. It means doing; correct?
- 19 A. **Yes.**
- 20 Q. And you had described this previously as
21 not fufu and going in your living room and burning
22 incense?
- 23 A. **Correct.**
- 24 Q. This is a way for people, including
25 yourself, to take control of your own life;

- 1 correct?
- 2 A. **Yes.**
- 3 Q. It's not to give somebody else control
4 over your life, is it?
- 5 A. **No.**
- 6 Q. It's not for Mr. Ray to have control over
7 your life, is it?
- 8 A. **No.**
- 9 Q. It's for you to have control over your
10 life; correct?
- 11 A. **Yes.**
- 12 Q. And so, for instance, at the Spiritual
13 Warrior seminar, a bunch of folks cut their hair?
- 14 A. **Yes.**
- 15 Q. And you said to yourself -- I believe on
16 direct testimony, you said, not for me; correct?
- 17 A. **Yes.**
- 18 Q. And the exact reason why you said, not
19 for me, is because if you cut your hair, it would
20 be because you're bowing to peer pressure?
- 21 A. **Yes.**
- 22 Q. And that's exactly something that Mr. Ray
23 would ask you in his courses to consider? Why are
24 you doing this?
- 25 A. **Right.**

- 1 Q. Are you doing it because you're bound to
2 peer pressure? Right?
- 3 A. **Right.**
- 4 Q. And if you are, don't do it?
- 5 A. **Right.**
- 6 Q. If you are doing it because you want to
7 challenge yourself, do it?
- 8 A. **Right.**
- 9 Q. So it wasn't you must cut your hair, was
10 it?
- 11 A. **No. I always had free will in that
12 moment.**
- 13 Q. And you mentioned free will. Let's talk
14 about -- and this jury has heard quite a bit about
15 the various activities at the -- at the Spiritual
16 Warrior seminar. But the yoga. 6:00 a.m. you go
17 out and do yoga. You chose to do that; right?
- 18 A. **Yes.**
- 19 Q. And you didn't have to do it, did you?
- 20 A. **No.**
- 21 Q. And if somebody started making fun of you
22 because you weren't doing your yoga, would you
23 care?
- 24 A. **That's my issue.**
- 25 Q. Yeah. Because you only can be made fun

- 1 of if you let somebody get under your skin; right?
- 2 A. **Yes.**
- 3 Q. It's your own decision?
- 4 A. **Yes.**
- 5 Q. These breathing exercises. You huff and
6 puff, listen to loud music?
- 7 A. **Yes.**
- 8 Q. Get dizzy?
- 9 A. **I don't recall getting dizzy.**
- 10 Q. Basically, hyperventilating?
- 11 A. **I don't know if it's hyperventilating.**
- 12 Q. Okay. To loud music?
- 13 A. **Yes.**
- 14 Q. And you didn't have to do it, did you?
- 15 A. **No.**
- 16 Q. If you wanted to take off the headphones,
17 you could just take them off?
- 18 A. **I didn't have headphones.**
- 19 Q. You're right. I'm sorry. That's the
20 meditation thing?
- 21 A. **Right.**
- 22 Q. Sorry. Okay. With the breathing you
23 could stop anytime you want?
- 24 A. **Yes.**
- 25 Q. Go back to your room -- correct? -- if

1 you felt like it?
 2 A. Yes.
 3 Q. You could take a walk?
 4 A. Yes.
 5 Q. Yes. And I misspoke. Let's talk about
 6 the meditation. For the meditation you had
 7 earphones?
 8 A. Yes.
 9 Q. And you had raindrops and rocks -- or
 10 raindrops and bells?
 11 A. Yes.
 12 Q. That's the sound that was going through
 13 these earphones?
 14 A. Yes.
 15 Q. If you wanted to take them off, you could
 16 just take them off?
 17 A. Yes.
 18 Q. They're not literally driving you crazy,
 19 running out of the room screaming your head off,
 20 are they?
 21 A. No.
 22 Q. So if Dennis Mehravar came and told this
 23 jury that these earphones and this raindrop sound
 24 and bells literally drove him crazy and made him
 25 have to run out into the street, that wasn't your

1 experience, was it?
 2 MS. POLK: Your Honor, objection. Misstates
 3 the testimony.
 4 THE COURT: Overruled.
 5 You may answer that if you can.
 6 Q. BY MR. LI: That wasn't your
 7 experience --
 8 A. **That was not my experience at all.**
 9 Q. You watched movie clips, The Last
 10 Samurai, with Tom Cruise?
 11 A. Yes.
 12 Q. Hollywood movie?
 13 A. Yes.
 14 Q. Matrix, with Keanu Reeves and Laurence
 15 Fishburne?
 16 A. Yes.
 17 Q. Hollywood movie?
 18 A. Yes.
 19 Q. That didn't affect your ability to think
 20 for yourself, did it?
 21 A. No.
 22 Q. Did not deprive you of free will to
 23 choose whatever activities you wanted to get
 24 involved in?
 25 A. No.

1 Q. The Vision Quest. You went out and sat
 2 out in the desert?
 3 A. **I did.**
 4 Q. In a circle?
 5 A. **I did.**
 6 Q. You could have jumped out of the circle
 7 if you wanted to; right?
 8 A. Yes.
 9 Q. You could have jumped back in?
 10 A. Yes.
 11 Q. You could have ran up to the highway if
 12 you felt like it?
 13 A. Yes.
 14 Q. You could have run back in; correct?
 15 A. Yes.
 16 Q. Nobody was there making you do anything?
 17 A. No.
 18 Q. You could have stayed awake all night?
 19 A. Yes.
 20 Q. You could have gone to sleep?
 21 A. Yes.
 22 Q. You could have drawn pictures? You could
 23 have done anything you want?
 24 A. **Correct.**
 25 Q. And you chose to what? Meditate, write

1 in your journal, enjoy the scenery?
 2 A. **Yeah. All of that.**
 3 Q. Oh. The Samurai Game. So then we have
 4 this game between the two clans -- right? -- of
 5 participants?
 6 A. Yes.
 7 Q. And you were in a dual, which I suppose
 8 is supposed to sort of imitate a samurai dual.
 9 Correct? It's for the game.
 10 A. **I would guess.**
 11 Q. It's a game; right?
 12 A. **Uh-huh.**
 13 Q. And your challenge was to hold a note as
 14 long as you could?
 15 A. Yes.
 16 Q. And like "la," something like that?
 17 A. Yes.
 18 Q. And how long did you go?
 19 A. **I lost. So not as long as the other**
 20 **person.**
 21 Q. You, basically, sat there and went "la"
 22 for however long it was, and the other person beat
 23 you?
 24 A. Yes.
 25 Q. Okay. And then you were pronounced dead?

1 A. Yes.
 2 Q. Right?
 3 A. Yes.
 4 Q. And you were, I guess by Mr. Ray,
 5 condemned to die -- is that right? -- because you
 6 lost the deal?
 7 A. Yeah. Those were the rules. When you
 8 lost, you die.
 9 Q. Right. Now, it's a game; right?
 10 A. Yes.
 11 Q. And did you think this was serious in the
 12 sense that people are actually dying?
 13 A. No.
 14 Q. This is a team-building exercise;
 15 correct?
 16 A. Yes.
 17 Q. And it's about do you keep your
 18 commitments; right?
 19 A. Yes.
 20 Q. And there -- you know -- James Ray was
 21 wearing some kind of Halloween costume robe;
 22 correct?
 23 A. Yes.
 24 Q. And he was God for purposes of the game;
 25 correct?

1 A. Yes.
 2 Q. And there was a guy, Lou Caci, who was a
 3 ninja; correct? If you recall.
 4 A. Sorry. I don't.
 5 Q. Some guy played the ninja; right?
 6 A. Yes.
 7 Q. And if he looked at you and you met eyes
 8 with him, you would die?
 9 A. Yes.
 10 Q. Okay. That guy wasn't a real ninja, was
 11 he?
 12 A. No.
 13 Q. Okay. There were Angels of Death?
 14 A. Yes.
 15 Q. Okay. They were not real Angels of
 16 Death, were they?
 17 A. No.
 18 Q. They were just the Dream Team people --
 19 right? -- or JRI employees?
 20 A. I'm not sure.
 21 Q. Whoever they were?
 22 A. Right.
 23 Q. Okay. And let's just -- Mr. Ray. He was
 24 not God, was he?
 25 A. No.

1 Q. So let's move to the sweat lodge. Before
 2 the sweat lodge Mr. Ray gave you and all of the
 3 participants a talk.
 4 Do you recall that in the lecture hall?
 5 A. Yes.
 6 Q. And are you aware that talk was
 7 tape-recorded?
 8 A. No.
 9 Q. Okay. If it was tape-recorded, you would
 10 agree that it is a better record of what was
 11 explicitly said by Mr. Ray than your current memory
 12 today?
 13 A. Yes.
 14 Q. Because it's recorded?
 15 A. Yes.
 16 Q. And it is possible, is it not, that you
 17 may have misrecollections of the exact words
 18 Mr. Ray used in the various -- what I'll call the
 19 "pregame speech"?
 20 A. Yes.
 21 Q. But he did say it would be hot, didn't
 22 he?
 23 A. Yes.
 24 Q. And it was?
 25 A. Yes.

1 Q. And he did say it was going to be very
 2 close, and if you have claustrophobia issues, this
 3 is going to be one of the issues you have to deal
 4 with; correct?
 5 A. Yes.
 6 Q. And, in fact, I believe it was Sylvia did
 7 have claustrophobia issues. Correct?
 8 A. Yes.
 9 Q. And you were right near her?
 10 A. Yes.
 11 Q. And she was saying words to the effect of
 12 I don't want to be here?
 13 A. She wasn't sure that she could stay.
 14 Q. It's too close?
 15 A. Yes.
 16 Q. And you and her husband, Rich, in talking
 17 to her were encouraging her, you can do this? Just
 18 breathe; right?
 19 A. Yes.
 20 Q. Right?
 21 A. Yes.
 22 Q. Did you tell her to breathe?
 23 A. Yes.
 24 Q. And the reason is it will calm you down?
 25 A. Yes.

1 Q. Ultimately at the end of round 1, boom,
2 she was out of there?
3 A. Yes.
4 Q. She had had it?
5 A. Yes.
6 Q. Did you grab her leg and hold her back?
7 A. No.
8 Q. Did anybody grab her and try to hold her
9 back?
10 A. No.
11 Q. She just left?
12 A. She left.
13 Q. Because she did not want to be there
14 anymore?
15 A. Correct.
16 Q. Now, Mr. Ray also said, essentially,
17 words to the effect you were going to be miserable?
18 It's going to be really hard? Correct?
19 A. Yes.
20 Q. And it was?
21 A. It was.
22 Q. Now, he did say that in the tradition,
23 it's a rebirthing ceremony?
24 A. Yes.
25 Q. And entering the sweat lodge is like a

1 womb?
2 A. Yes.
3 Q. And coming out is like being reborn?
4 A. Yes.
5 Q. It's a metaphor; right?
6 A. Yes.
7 Q. So to the extent that people are talking
8 about death and rebirth, they are not talking
9 about -- nobody is talking about dying, are they?
10 A. No.
11 MS. POLK: Objection. Foundation,
12 speculation.
13 THE COURT: Sustained.
14 Q. BY MR. LI: Okay. Are you talking about
15 dying, like really dying?
16 A. No.
17 Q. Did you understand any of the
18 conversations about death and rebirth to be about
19 physically, literally dying?
20 A. Not at all.
21 Q. You're a business person, are you not?
22 A. Yes.
23 Q. It would be a bad thing for your business
24 if part of your business plan were for your clients
25 to actually die; correct?

1 A. Yes.
2 Q. That would be a very bad business plan.
3 You would not pursue it, would you?
4 A. No.
5 Q. Now, Mr. Ray in his pregame speech also
6 told you get close to the mother earth? Get close
7 to the ground; correct?
8 A. Yes.
9 Q. The reason was she will cool you --
10 mother earth?
11 A. Yes.
12 Q. You remember that?
13 A. Yes.
14 Q. And that was if it gets too hot sitting
15 up, get yourself down?
16 A. Yes.
17 Q. Now, Ms. Polk had asked you any safety
18 precautions, any safety speeches? Did he give you
19 any safety instructions, or something to that
20 effect. Would you agree with me that getting from
21 a real hot environment to getting to a really
22 cool -- cooler environment, that might be construed
23 as a safety --
24 A. I would.
25 Q. -- precaution. Did you consider it for

1 safety?
2 A. I did. I did.
3 Q. Did you actually go from a sitting
4 position to a laying down position?
5 A. Yes, I did.
6 Q. Did it actually cool you?
7 A. It did.
8 Q. Now, he also said -- and I want to talk
9 about a really important safety precaution. Okay?
10 He also said if you can't take it anymore -- and
11 I'm not saying that you won't be able to take it.
12 Think positive. I believe you can do it. But if
13 you just can't do it, here's how you get out.
14 Did he tell you that?
15 A. I don't recall this is how you get out.
16 I recall that if you really just can't take it, but
17 not the rest of that.
18 Q. Okay. And then -- I'm paraphrasing.
19 This is how you get out means get out. And because
20 this is a sacred space, get out, and the audience
21 said, clockwise?
22 A. Yes. That did happen.
23 Q. So he did say, now that being said, if
24 you just get to a point where you just -- you just
25 got to leave, you just feel like you cannot, and a

1 couple of things is that please remember this is
 2 extremely hot in the center, and many of you are
 3 going to be close to that. Hot in the center is
 4 the pit; correct?
 5 **A. Yes.**
 6 **Q.** And it was very hot in the center,
 7 correct?
 8 **A. Yes.**
 9 **Q.** And, in fact, Lou Caci unfortunately fell
 10 into the pit or put his arm into the pit and burned
 11 himself; correct?
 12 **A. Yes.**
 13 **Q.** And he did say, so if you have to leave,
 14 then you need to. And you're right here. And you
 15 had -- Mr. Ray had a diagram, did he not?
 16 **A. Yes.**
 17 **Q.** And you're right here. You can't duck
 18 out this way. You will have to go all the way
 19 around the lodge. After every round we'll open the
 20 gate for more grandfathers. And sometimes I'll
 21 leave it open for a little while just to let some
 22 fresh air in.
 23 So you cannot leave during a round. If
 24 you feel you just cannot transcend and overcome
 25 this, then when the gates are open, if you have to

1 leave, you leave and you leave very, very in a
 2 controlled manner.
 3 Remember that?
 4 **A. Yes.**
 5 **Q.** Very carefully because there is legs, and
 6 it's dark, and there is legs, and there is knees,
 7 and there is elbows.
 8 You remember that?
 9 **A. Yes.**
 10 **Q.** And, essentially, what he was telling you
 11 is here's the safety precaution. If you got to
 12 leave, leave. Right?
 13 **A. Yes.**
 14 **Q.** And if you got to leave, do it carefully?
 15 **A. Yes.**
 16 **Q.** Don't just go running straight out;
 17 correct?
 18 **A. Correct.**
 19 **Q.** Because if you go running straight out,
 20 you might trip over some arms and legs and elbows;
 21 correct?
 22 **A. Yes.**
 23 **Q.** And there is a hot pit with rocks that
 24 have been heated in a fire in the middle of the
 25 sweat lodge?

1 **A. Yes.**
 2 **Q.** And you don't want to stampede each
 3 other, do you?
 4 **A. No.**
 5 **Q.** And it's better to wait your turn and go
 6 out in an orderly fashion?
 7 **A. Yes.**
 8 **Q.** And it's dark in there?
 9 **A. Yes.**
 10 **Q.** In fact, you told Ms. Polk how dark it
 11 was; correct?
 12 **A. Yes.**
 13 **Q.** You told her that when you just lifted up
 14 the side of the tent, boom, a bunch of light would
 15 come in and it would almost look like a light was
 16 being waived around?
 17 **A. Yes.**
 18 **Q.** In fact, what you heard Mr. Ray say was
 19 turn off the light?
 20 **A. Yes.**
 21 **Q.** So wait until the round is over and the
 22 flap is open. That was the instruction?
 23 **A. Yes.**
 24 **Q.** Let me talk to you quickly about the
 25 lodge for a second. And I'm going to -- we do this

1 a lot on here. It might make a better record if we
 2 do it here.
 3 So that's the lodge. And I'm going to
 4 put the door here. Just imagine the door is over
 5 there. Okay? And the pit is there. Okay? And
 6 Mark Rock was here?
 7 **A. Uh-huh.**
 8 **Q.** And I'm going to mark for you an "X" and
 9 put "M.R."
 10 **A. Okay.**
 11 **Q.** And you were where? If you can just come
 12 up here and point.
 13 Right there?
 14 **A. Right next to him.**
 15 **Q.** Okay. So you're right here. And I know
 16 it was dynamic and people moved around. So let's
 17 start with maybe the fifth or sixth round. Okay?
 18 **A. Okay.**
 19 **Q.** So where is Sean Ronan?
 20 **A. On the other side of Mark Rock.**
 21 **Q.** Okay. Sean Ronan is right here?
 22 **A. Uh-huh.**
 23 **Q.** And where is Tess Wong?
 24 **A. Next to Sean.**
 25 **Q.** Okay. Is this accurate? It's obviously

1 not to scale. Is this accurate?

2 **A. Yes.**

3 **Q.** Ultimately at the end, where is Kirby
4 Brown?

5 **A. Next to me. There is a little bit of a**
6 **space because that's where James Shore was**
7 **originally, then Kirby.**

8 **Q.** So if I put it right about there, would
9 it be accurate?

10 **A. Maybe a little closer.**

11 **Q.** Right there?

12 **A. Yes.**

13 **Q.** Okay?

14 **A. Uh-huh.**

15 **Q.** And where is James Shore?

16 **A. Next to Kirby, on that site.**

17 **Q.** Right about there?

18 **A. Uh-huh.**

19 **Q.** Now, at some point -- I'm going to do it
20 in red because she is, essentially, helped out by
21 Mr. Shore. I'll do it in green.

22 Where was Sidney Spencer?

23 **A. She was on the -- on the left side if**
24 **we're looking at it. The left side of Kirby.**

25 **Q.** Like, right here?

1 **A. Yes.**

2 **Q.** Okay. So I'm just going to put her,
3 like, right in the back row or in the front row
4 or --

5 **A. Right next to Kirby.**

6 **Q.** Okay. So this would be -- I'm going to
7 do it in red so there is a little contrast.

8 So this was Sidney Spencer?

9 **A. Yes.**

10 **Q.** And eventually she leaves?

11 **A. Yes.**

12 **Q.** With Mr. Shore's help and the help of
13 another person?

14 **A. Uh-huh.**

15 **Q.** So fair to say that these people got
16 sick; correct?

17 **A. Uh-huh.**

18 **Q.** And these people got sick; correct?

19 **A. Uh-huh.**

20 **Q.** Yes?

21 **A. Yes.**

22 **Q.** I'm sorry. The court reporter can't take
23 down "uh-huh."

24 And you and Mr. Rock did not get sick?

25 **A. Right.**

1 **Q.** And the heat was very high there;

2 correct?

3 **A. Yes, it was. Yes.**

4 **Q.** It was -- at one point you said 5 times
5 hotter than a sauna and another point 10 times
6 hotter than a sauna; right?

7 **A. Yes.**

8 **Q.** It was very, very hot?

9 **A. Yes.**

10 **Q.** It was not so hot, however, that you were
11 looking for a way to escape?

12 **A. Correct.**

13 **Q.** In fact, that's what you told the police
14 before; correct?

15 **A. Yes.**

16 **Q.** So just so we're clear, the folks here
17 got sick and the folks here got sick?

18 **A. Yes.**

19 **Q.** But you and Mr. Rock, who are on the
20 backside of the sweat lodge also with all of these
21 folks, did not get sick?

22 **A. Right.**

23 **Q.** Now, I will return to my seat very
24 quickly. But just for the record, you were this
25 close to Ms. Brown when James Shore was talking to

1 her?

2 **A. Further.**

3 **Q.** Further. This close? About this close?

4 **A. About like that.**

5 **Q.** Okay. And Mr. Shore was here up on his
6 elbow in the eighth round coaching Kirby Brown?

7 **A. Yes.**

8 **Q.** So we're talking a few feet?

9 **A. Yes.**

10 **Q.** Correct? Now, Mr. Ray -- where was
11 Mr. Ray?

12 **A. I believe he was at the opening close to**
13 **me.**

14 **Q.** Here?

15 **A. Yes.**

16 **Q.** Is that accurate?

17 **A. I believe so.**

18 **Q.** Now -- so, basically -- let me see if you
19 can -- the sweat lodge was about 23 feet? Is this
20 about how far the sweat lodge was, the diameter of
21 the sweat lodge?

22 **A. Yes.**

23 **Q.** Okay. So this is about the position --
24 correct? -- of where Mr. Ray was in comparison to
25 where you, James Shore and Kirby Brown were;

1 correct?
 2 **A. Yes.**
 3 **Q.** And between you there was a pit?
 4 **A. Yes.**
 5 **Q.** There were people surrounding each edge?
 6 **A. Yes.**
 7 **Q.** There were people moving around
 8 repositioning themselves; correct?
 9 **A. Uh-huh.**
 10 **Q.** Correct?
 11 **A. Yes.**
 12 **Q.** And it was dark?
 13 **A. Yes.**
 14 **Q.** Now -- and just for the record, I'm
 15 standing by counsel table about where my chair is,
 16 about two or three feet back from counsel table.
 17 This was approximately where Mr. Ray was?
 18 **A. Yes.**
 19 **Q.** Okay. So somebody outside of the sweat
 20 lodge would be here. And now I'm standing behind
 21 the bar.
 22 **A. I don't know where someone would be**
 23 **standing outside.**
 24 **Q.** If someone were standing just outside the
 25 door of the sweat lodge --

1 **A. That would be fair.**
 2 **Q.** They would be here?
 3 **A. Right.**
 4 **Q.** Do you remember there was a log out by
 5 the tarp?
 6 **A. A what?**
 7 **Q.** A log. I'll show it to you.
 8 **THE COURT:** Ladies and gentlemen, the lawyer's
 9 away from the microphone. Can everybody hear the
 10 attorney's questions okay?
 11 **MR. LI:** If I could have 144 up.
 12 **Q.** Do you see this log here, ma'am?
 13 **A. Yes.**
 14 **Q.** If there were testimony that that log is
 15 30 feet from the door of the sweat lodge -- the
 16 officer with a GPS, a computer program, calculated
 17 it in front of this jury to be 30 feet from the
 18 door of the sweat lodge. Okay?
 19 Would you agree with me that if this is
 20 the door of the sweat lodge and 30 feet, I would --
 21 I'm not going to go out of the courtroom, but I
 22 would, essentially, be outside of the courtroom 30
 23 feet from there?
 24 You would agree with that?
 25 **A. Yes.**

1 **Q.** I'd be out in the hallway?
 2 **A. Yes.**
 3 **Q.** Now, I'm going to ask you a question. If
 4 I'm talking in just a speaking tone, are you going
 5 to hear me better if I'm right here? Are you going
 6 to hear me better than in you're out in the
 7 hallway?
 8 **A. Yes.**
 9 **Q.** Now, you can agree with me that if I'm
 10 speaking in a speaking tone, I'm going to hear you
 11 better right here than right over here with all the
 12 people between you?
 13 **A. Yes.**
 14 **Q.** You can agree with me that if you're
 15 speaking in a speaking tone and I'm outside the
 16 sweat lodge and there is all these tarps, blankets,
 17 people, all these kind of folks in here, you,
 18 Ms. Gordon, are going to hear much better the
 19 person talking right next to you than this person
 20 standing right here?
 21 **A. Yes.**
 22 **Q.** You can agree with me that the person out
 23 in the hallway is not going to hear what's being
 24 said 24 inches from your ear, is not going to hear
 25 that as well as you hear it?

1 Would you agree with that?
 2 **A. I do.**
 3 **Q.** Now, Ms. Gordon, this chart here, this
 4 accurately depicts what you experienced, saw, and
 5 perceived when you were inside the sweat lodge?
 6 **A. Yes.**
 7 **MR. LI:** I'd move this into evidence. And
 8 could you initial it.
 9 If we can mark it next in order, I'd like
 10 to move it into evidence.
 11 **MS. POLK:** The state has no objection. What
 12 is the exhibit number?
 13 **THE COURT:** 1080.
 14 (Exhibit 1080 admitted.)
 15 **MR. LI:** Thank you.
 16 If you could date it as well. Today is
 17 the third. Thank you.
 18 **Q.** Now, Ms. Gordon, there were Dream Team
 19 members inside the sweat lodge --
 20 If we could have Exhibit 414 up.
 21 And now I'm not going to use that. But I
 22 think everyone has seen this before. There are
 23 Dream Team members oriented -- JRI folks -- at the
 24 four corners; correct?
 25 **A. Yes.**

1 Q. And their job was to -- as you saw in
2 that document, to help people if they needed help?
3 A. Yes.
4 Q. Now, Mr. Ray was here; correct?
5 A. Yes.
6 Q. And he had other JRI employees next to
7 him; correct?
8 A. Yes.
9 Q. So there were a significant number of
10 people from JRI inside the sweat lodge; correct?
11 A. Yes.
12 Q. Now, outside the sweat lodge there were
13 also Dream Team members; correct?
14 A. I assume.
15 Q. If you know, you know. If you don't, you
16 don't. If you don't know, that's okay.
17 A. I know one that was outside.
18 MR. LI: Okay. If could I have Exhibit 146.
19 Q. And the folks in the -- on the Dream Team
20 wore these blue T-shirts; correct?
21 A. Yes.
22 Q. And you wouldn't have any reason to doubt
23 this is an accurate photograph of the sweat lodge
24 during the ceremony?
25 A. Yes. That's accurate.

1 Q. And you wouldn't have any reason to doubt
2 these are Dream Team members outside?
3 A. Those are.
4 Q. And this one here in the black is
5 Jennifer Haley. And she was also a Dream Team
6 member?
7 A. Yes.
8 Q. She, I guess, wanted to wear black and a
9 tank top as opposed to the blue T-shirts; right?
10 A. It looks like it.
11 Q. And when you came out, for instance, they
12 had the hoses; correct?
13 A. Hoses, water. I'm not sure if it was a
14 hose or a bucket of water.
15 Q. And somebody cooled you off?
16 A. Yes.
17 Q. And it actually cooled you off, and you
18 started recovering, I believe on direct testimony,
19 within 5 to 15 minutes? You don't know for sure?
20 A. Right.
21 Q. And you were right back in the same
22 section as everybody else was?
23 A. Yes.
24 Q. And you recovered in 5 to 15 minutes?
25 You're not sure?

1 A. Correct.
2 Q. You came out feeling weak?
3 A. Yes.
4 Q. Ms. Polk asked you if you had previously
5 told some police officer that it was like coming
6 back from the dead. And you were using colorful
7 language?
8 A. Yes.
9 Q. A metaphor?
10 A. Yes.
11 Q. You were not actually coming back from
12 death?
13 A. No.
14 Q. Now, during the ceremony it is true, is
15 it not, that people left?
16 A. Yes.
17 Q. And, for instance, Sylvia?
18 A. Yes.
19 Q. And that many people left?
20 A. Yes.
21 Q. And the space where you were sitting
22 became more -- you had more room to move around?
23 A. Yes.
24 Q. In fact, when you started off the sweat
25 lodge ceremony, your knees were pushed up against

1 somebody?
2 A. Yes.
3 Q. And that was not very comfortable?
4 A. No.
5 Q. In fact, Mr. Ronan was pushing up against
6 your knees?
7 A. Yes.
8 Q. I don't know how much he weighs but --
9 A. He's bigger than I am.
10 Q. He's bigger than you are. And he's
11 leaning against your knees?
12 A. Yes.
13 Q. You said, I can't do this?
14 A. Right.
15 Q. So he stopped?
16 A. Correct.
17 Q. And you were able to say, hey, Sean, I
18 can't do this?
19 A. I can't told you. I can't do it.
20 Q. He said, okay. He either said, okay, or
21 stopped leaning against you?
22 A. Right.
23 Q. Eventually people left, and Mr. Ronan
24 assumed his position next to Mark Rock?
25 A. Yes.

1 Q. And he was okay when he was leaning up
2 against your knees -- correct? -- so far as you
3 know?
4 A. **Correct. Yes.**
5 Q. Now, you had testified on direct that at
6 a point during the ceremony relatively early on,
7 you heard somebody say, hey, we need help? We need
8 help getting someone out?
9 A. **Yes.**
10 Q. And Mr. Ray said, help him out? Get them
11 out?
12 A. **Yes.**
13 Q. And, for all you know, they got out?
14 A. **Yes.**
15 Q. Now, you were near -- as our diagram
16 shows, you were near James Shore and Kirby Brown at
17 the end?
18 A. **Yes.**
19 Q. And it was really hot?
20 A. **Yes.**
21 Q. And there wasn't any circulation? You
22 didn't feel air blowing on you?
23 A. **I didn't feel air.**
24 Q. You didn't feel any relief from the heat
25 except for to get low?

1 A. **That's correct.**
2 Q. You thought about leaving?
3 A. **Yes.**
4 Q. You really pushed yourself and controlled
5 your breathing, controlled your heart rate, as best
6 as you could so that you could complete the task?
7 A. **Yes.**
8 Q. And it was bad? It was hard?
9 A. **It was hard.**
10 Q. But it wasn't so bad that you were
11 looking for ways to escape it?
12 A. **No.**
13 Q. In fact, that's what you told the police
14 on October 8, 2009, right after the accident?
15 A. **Yes.**
16 Q. Now, towards round 7, as we've indicated
17 on that chart there, Ms. Spencer needed assistance
18 to get out; correct?
19 A. **Yes. I think it was around at the end of**
20 **six.**
21 Q. End of six. Just to be clear, end of
22 six, six to seven, however you want to call it.
23 End of sixth, beginning of seventh, you helped her?
24 A. **Yes.**
25 Q. By helping her get lower, by cushioning

1 her?
2 A. **Yes.**
3 Q. And Mr. Shore and somebody else helped
4 pull her out?
5 A. **Yes.**
6 Q. Correct? And you saw Mr. Shore go all
7 the way to somewhere around here?
8 A. **Yes.**
9 Q. Okay. Right around where Mr. Ray is?
10 A. **Yes.**
11 Q. And somehow Ms. Spencer was then helped
12 out of the lodge from the -- from the gate?
13 A. **Yes.**
14 Q. But you didn't see?
15 A. **I didn't see who helped from that point.**
16 Q. And then Mr. Shore came back?
17 A. **He did.**
18 Q. Okay. And he came back and originally
19 sat between you and Ms. Brown?
20 A. **Yes.**
21 Q. And then you and Mr. Shore had a
22 conversation about Ms. Brown's breathing?
23 A. **Yes.**
24 Q. And she was making that gurgling noise?
25 A. **Yes.**

1 Q. What you called the snot sort of sounding
2 noise?
3 A. **Yes.**
4 Q. And the two of you -- you don't recall
5 the exact conversation you had, but the two of you
6 agreed to push her up on her side so she could
7 breathe better?
8 A. **First it was me asking him to get her off**
9 **her back.**
10 Q. Okay.
11 A. **And he could not do that on his own.**
12 Q. So then you told him get on her other
13 side?
14 A. **Get on the other side and pull her arms,**
15 **and I'll push with my feet.**
16 Q. And so using the leverage that you can
17 with your feet, you were able to sort of push her
18 up on her side?
19 A. **We did push her on her side.**
20 Q. You and Mr. Shore?
21 A. **Yes.**
22 Q. And just to skip back for a second,
23 that's the seventh round; correct? Seventh or
24 eighth round?
25 A. **Seventh round.**

1 Q. I'll move back. Now, prior to that
 2 Ms. Brown in round, I believe you testified, three
 3 or four, is saying, we can do it? We can do it?
 4 We can do it?
 5 A. Yes.
 6 Q. And is she saying it -- she's yelling it?
 7 A. Yes.
 8 Q. That's a yell?
 9 A. Yes.
 10 Q. It's loud enough that people react?
 11 A. Yes.
 12 Q. People say hush up?
 13 A. **I remember shut up.**
 14 Q. Shut up. Okay. And the reason is
 15 because it's disruptive to the ceremony?
 16 A. **In my opinion, it was disruptive.**
 17 Q. And did other people say -- did
 18 Mr. Ronan, for instance, say, shut up?
 19 A. **Yes. He told her to shut up and stop it.**
 20 Q. Because we are doing it?
 21 A. **We are doing it.**
 22 Q. And eventually she did stop?
 23 A. Yes.
 24 Q. Okay. And then she resumed words to that
 25 effect, we can do it, in round -- sometime in

1 round 5 or 6?
 2 A. Yes.
 3 Q. And at that point, you Josh Fredrickson
 4 said or other people said shut up; right?
 5 A. Yes.
 6 Q. And is it one, two, three, four people?
 7 How many people are saying be quiet?
 8 A. **I remember Sean again, and I remember**
 9 **Josh.**
 10 Q. Were there others?
 11 A. **It seems there were others, but I**
 12 **remember those two voices.**
 13 Q. So there may have been others. You just
 14 don't recall who they were?
 15 A. **I can't identify a person.**
 16 Q. But it was a number of people responding
 17 to Kirby Brown yelling we can do it? We can do it?
 18 A. **Yes. A second time.**
 19 Q. And Mr. Fredrickson says, if you don't
 20 stop, we're going to have to ask you to leave, and
 21 she stops?
 22 A. Yes.
 23 Q. She could have left?
 24 MS. POLK: Objection. Foundation,
 25 speculation.

1 THE COURT: Sustained.
 2 Q. BY MR. LI: Mr. Fredrickson, essentially,
 3 said to her, if you don't stop, we're going to have
 4 to ask you to leave?
 5 A. Yes.
 6 Q. Then round -- end of round 6, beginning
 7 of round 7, Mr. Shore helped Sidney Spencer out.
 8 Kirby Brown starts to breathe in that gurgling
 9 manner in round 7?
 10 A. **Again, at the end of 6, beginning of 7,**
 11 **is when it was noticeable to both of us.**
 12 Q. Okay. And in round 7 you help her up on
 13 her side -- you and Mr. Shore?
 14 A. Yes.
 15 Q. And then round -- between round 7 and
 16 round 8 Mr. Shore says, we need some help here? He
 17 just puts it out there?
 18 A. Yes.
 19 Q. When you say, he just puts it out
 20 there -- you said that in your interview on
 21 October 8, 2009. Do you recall that?
 22 A. Yes.
 23 Q. What do you mean by that?
 24 A. **That he just said the words. He didn't**
 25 **direct it towards any person. He just -- we need**

1 **help over hear.**
 2 Q. He didn't say, for instance, Mark Rock,
 3 we need help over here?
 4 A. No.
 5 Q. He didn't say, Josh Fredrickson, we need
 6 some help over here?
 7 A. No.
 8 Q. He didn't say, for instance, Aaron
 9 Bennett, we need some help over here?
 10 A. No.
 11 Q. He didn't say, James Ray, we need some
 12 help over here?
 13 A. No.
 14 Q. He just put it out there?
 15 A. Yes.
 16 Q. And I believe your testimony is that it
 17 wasn't a yell?
 18 A. No.
 19 Q. It wasn't calling out?
 20 A. No.
 21 Q. It was saying, putting it out?
 22 A. Yes.
 23 Q. And you have no idea who heard it?
 24 A. **I don't.**
 25 Q. In fact, you heard it?

1 **A. Yes.**
 2 **Q.** But you were 24, 36 inches from the
 3 speaker; correct?
 4 **A. Yes.**
 5 **Q.** Now, you have no idea whether Josh
 6 Fredrickson, who was, I don't know, 15 feet from
 7 you, heard it with all the people between you?
 8 **A. I don't know if he heard.**
 9 **Q.** You have no idea?
 10 **A. I don't know.**
 11 **Q.** And you have no idea whether Mr. Ray, who
 12 was 23 feet from you -- and with all of those
 13 people between you, you have no idea whether he
 14 heard it either, do you?
 15 **A. No. I don't know.**
 16 **Q.** Now, Mr. Shore never said to you, I'm in
 17 distress?
 18 **A. He never said that.**
 19 **Q.** He never indicated his distress to you?
 20 **A. He never said words to me that he was**
 21 **distressed.**
 22 **Q.** He said things like, gosh, this is hard?
 23 **A. Yes.**
 24 **Q.** Jeez?
 25 **A. Yes.**

1 **Q.** And I'm repeating back some of the things
 2 that are in your transcript.
 3 **A. Yes.**
 4 **Q.** Jeez?
 5 **A. Yes.**
 6 **Q.** Gosh, this is hard?
 7 **A. Yes.**
 8 **Q.** Those to you sounded, did they not, like
 9 somebody who was trying to push themselves through
 10 a very difficult event?
 11 **A. Yes, it did.**
 12 **Q.** It did not sound to you, did it, as
 13 somebody who is saying, I'm -- I'm -- I'm dying?
 14 **A. No.**
 15 **Q.** I'm in medical distress?
 16 **A. No.**
 17 **Q.** I need help?
 18 **A. No.**
 19 **Q.** Call 9-1-1?
 20 **A. No.**
 21 **Q.** Now, Ms. Polk asked you -- after
 22 Mr. Shore said, we need help back here, Ms. Polk
 23 just asked you, okay. So then what happened next?
 24 And you said, Mr. Ray at some point
 25 closed the flap and said, nobody leaves. We're

1 going to -- round's about to start. Something like
 2 that. Correct?
 3 **A. Yes.**
 4 **Q.** You have no idea, do you, whether Mr. Ray
 5 was responding to you or whether he was just doing
 6 what he had done in an earlier round, saying, hey,
 7 I'm putting the flap down? Nobody can leave now?
 8 **A. It sounded consistent to the other times**
 9 **he said that.**
 10 **Q.** To the prior times; correct?
 11 **A. Yes.**
 12 **Q.** So you had no idea whether he was
 13 responding to what Mr. Shore said?
 14 **A. No.**
 15 **Q.** Because you don't even know if
 16 Mr. Shore -- Mr. Ray heard what James Shore said;
 17 correct?
 18 **A. Right.**
 19 **Q.** So this idea that, simply just putting
 20 them temporarily right next to each other, that
 21 Mr. Shore says this and then Mr. Ray said, oh,
 22 round over, it would be misleading to this jury,
 23 would it not, to imply that you know that Mr. Ray
 24 was responding to what Mr. Shore said? That would
 25 be misleading, wouldn't it?

1 **A. Yes.**
 2 **Q.** Because you don't know?
 3 **A. I don't know.**
 4 **Q.** Now, ma'am, at the -- just quickly. At
 5 the end of the ceremony, you saw Tess Wong;
 6 correct?
 7 **A. Yes.**
 8 **Q.** And you had testified that you saw that
 9 she -- her eyes or something with her eyes?
 10 **A. Yes.**
 11 **Q.** And I believe you testified that the
 12 pupils were very small?
 13 **A. The colored part of the eye.**
 14 **Q.** The colored part of the eye. So was it
 15 like a pinpoint like that?
 16 **A. Yes.**
 17 **Q.** And you said you saw some sort of white
 18 substance in her mouth; correct?
 19 **A. On the side of her mouth.**
 20 **Q.** On the side of her mouth. And then she
 21 was rolled over onto the side; correct?
 22 **A. No. Those were two different times.**
 23 **Q.** Sorry. Please correct me.
 24 **A. The eyes -- I noticed when she had been**
 25 **wrapped up in a blanket, it looked like she had**

1 **been cared for and she was recovering.**
 2 Q. Got it.
 3 A. **And the seeing -- the seeing the white on**
 4 **her mouth was right when I had come out of the**
 5 **sweat lodge.**
 6 Q. Okay. And when she had the blanket on,
 7 that was minutes after she exited the sweat lodge?
 8 A. **I don't know when she exited the sweat**
 9 **lodge.**
 10 Q. Minutes after you exited the sweat lodge?
 11 A. **Yes.**
 12 Q. So five minutes -- I know this is hard.
 13 But we're not talking half an hour, are we?
 14 A. **I don't think so.**
 15 Q. Because pretty shortly thereafter you
 16 went around to the back; correct?
 17 A. **I saw her wrapped in her blanket after I**
 18 **had gone to the back.**
 19 Q. I see. I see. So it was -- and, again,
 20 can you give me an estimate of how many minutes
 21 we're talking about after you exited the sweat
 22 lodge.
 23 A. **That I saw her in the blanket?**
 24 Q. Yes.
 25 A. **20 minutes.**

1 Q. 20 minutes. Okay. And this woman
 2 Kristina that you identified in your prior
 3 testimony but you don't recall her name now, she
 4 was hollering out things that didn't make sense?
 5 A. **Right.**
 6 Q. And you saw Mr. Ray come over to her;
 7 correct?
 8 A. **Yes.**
 9 Q. Now, was she on the ground?
 10 A. **Yes.**
 11 Q. Did Mr. Ray get down on his knees. How
 12 did he talk to her?
 13 A. **He was leaning over her and --**
 14 Q. Sort of like this?
 15 A. **Yes.**
 16 Q. And then he was holding her hand?
 17 A. **He had her hand up to him.**
 18 Q. So he held her hand up to him?
 19 A. **Yes.**
 20 Q. And was he looking at her?
 21 A. **Yes.**
 22 Q. And was he talking to her?
 23 A. **Yes.**
 24 Q. And he was saying, come back? Wake up?
 25 A. **Wake up.**

1 Q. Words to that effect?
 2 A. **Yes.**
 3 Q. Was he attempting to comfort her?
 4 A. **Yes.**
 5 Q. And this is right after the accident,
 6 basically? I'll rephrase that. Right after the
 7 sweat lodge ceremony was over?
 8 A. **Yes.**
 9 Q. And you don't know, for instance, do you,
 10 whether Mr. Ray also went around to the back where
 11 James Shore and Kirby Brown were and talked to
 12 Dr. Jean Armstrong, do you?
 13 A. **I saw him in the back there, but I don't**
 14 **know that he was talking. And I'm not sure that I**
 15 **know who Jean is.**
 16 Q. But you did see him back there?
 17 A. **Yes.**
 18 Q. And you don't know what conversations
 19 took place?
 20 A. **No.**
 21 Q. Now, I just got one more area, and I will
 22 try to conclude.
 23 You were interviewed on October 8, 2009;
 24 correct?
 25 A. **Yes.**

1 Q. And this was up in the dining hall?
 2 A. **Yes.**
 3 Q. And right after the evening of the
 4 accident; correct?
 5 A. **Yes.**
 6 Q. And when you went to the dining hall,
 7 there were a lot of people?
 8 A. **Yes.**
 9 Q. And the reason to go there was, one, to
 10 get updates as to what was happening; correct?
 11 A. **Yes.**
 12 Q. And, two, because the police were there
 13 and wanted to get information from you all?
 14 A. **Yes.**
 15 Q. And they were taking statements?
 16 A. **Yes.**
 17 Q. And you gave a statement?
 18 A. **Yes.**
 19 Q. And that statement was tape-recorded by
 20 the police officer, the detective, who was
 21 interviewing you; correct?
 22 A. **Yes.**
 23 Q. And the detective's name was -- was it
 24 Parkison, Wendy Parkison?
 25 A. **Yes.**

1 Q. And she was, basically, at a table
 2 interviewing one witness after another?
 3 A. Yes.
 4 Q. Correct? And you and Mr. Rock sort of
 5 wanted to be interviewed together?
 6 A. **Well, yes. Like, right after each other.**
 7 Q. Right. That's what I mean. Right after
 8 each other. And that's because you two had had
 9 similar experiences?
 10 A. Yes.
 11 Q. And that you were, basically, in the same
 12 place?
 13 A. Yes.
 14 Q. And both of you, Mr. Rock included, were
 15 shocked at what had happened?
 16 A. Yes.
 17 Q. Now, at various times while you were
 18 giving your interview and while these interviews
 19 were taking place, EMT folks showed up; correct?
 20 A. Yes.
 21 Q. And by "EMT guys," I mean -- you know --
 22 men or women in uniforms.
 23 A. Yes.
 24 Q. Could you describe for us the uniforms.
 25 A. **What I remember is just kind of dark,**

1 **dark clothing, and a belt with things on it.**
 2 MR. LI: If I could have Exhibit 230 up. And
 3 if we can blow up this fellow back here with this
 4 group of people. Right in the middle. Sorry.
 5 Q. Sort of like that?
 6 A. Yes.
 7 Q. And they would come in and they would
 8 give you updates; correct?
 9 A. Yes.
 10 Q. And they would check on you?
 11 A. Yes.
 12 Q. And they would check on each of the
 13 participants who might need help?
 14 A. Yes.
 15 Q. And you recall seeing one of these EMT
 16 folks come in and say, hey, watch out for each
 17 other?
 18 A. Yes.
 19 Q. And you recall him saying to look out for
 20 the following persisting symptoms: Nausea,
 21 headache and vomiting?
 22 A. Yes.
 23 MR. LI: Your Honor, at this time I'd like to
 24 play Exhibit 742, which is in evidence.
 25 Q. We've played a tape with Mr. Hughes

1 present; correct?
 2 A. Yes.
 3 Q. And you listened to that tape?
 4 A. Yes.
 5 Q. And that tape is something you heard an
 6 EMT say on the night of October 8, 2009?
 7 A. Yes.
 8 THE COURT: Ms. Polk?
 9 MS. POLK: No objection, Your Honor.
 10 THE COURT: You may play that.
 11 MR. LI: Thank you, Your Honor.
 12 (Exhibit 742 played.)
 13 Q. BY MR. LI: Now, you have told this jury
 14 that at several times EMTs would come in and give
 15 updates of what was happening; correct?
 16 A. Yes.
 17 Q. And you told this jury that at several
 18 times during these interviews while the police were
 19 in the dining hall interviewing people that these
 20 EMT personnel would come in and say, look out for
 21 each other?
 22 A. Yes.
 23 Q. Correct? And you told the jury that at
 24 times these EMT folks while the police were in
 25 there taking statements would come in there and say

1 look out for these following symptoms; correct?
 2 A. Yes.
 3 Q. And you've told the jury now that that
 4 tape accurately reflects what you heard on the
 5 night of October 8, 2009; correct?
 6 A. Yes.
 7 Q. And that you heard it from an EMT;
 8 correct?
 9 A. Yes.
 10 Q. Now, you don't know the EMT's name, do
 11 you?
 12 A. No.
 13 Q. So he might be an unknown male to you?
 14 A. Yes.
 15 Q. If we were just going to call him an
 16 "unknown male," it would be because he's male?
 17 A. Yes.
 18 Q. And you don't know his name; correct?
 19 But there was an EMT who came in there and said the
 20 things we just heard?
 21 A. Correct.
 22 Q. Look out for each other?
 23 A. Yes.
 24 Q. Here are the symptoms to look out for;
 25 correct?

1 A. Yes.
 2 Q. Nausea; correct?
 3 A. Yes.
 4 Q. Vomiting?
 5 A. Yes.
 6 Q. Correct? Headache?
 7 A. Yes.
 8 Q. Correct? He said, we don't know how, but
 9 there may have been carbon monoxide or
 10 organophosphates mixed in somehow?
 11 A. Yes.
 12 Q. And that was an EMT who said that;
 13 correct?
 14 A. Yes.
 15 Q. It would be misleading to you, would it
 16 not -- it would be misleading to tell this jury
 17 that, oh, we don't know who it is, wouldn't it?
 18 A. Yes.
 19 Q. Because there were police in the dining
 20 hall that night; correct?
 21 A. Yes.
 22 Q. They were tape-recording people?
 23 A. Yes.
 24 Q. They were tape-recording you?
 25 A. Yes.

1 Q. They were tape-recording other witnesses?
 2 A. Yes.
 3 Q. Correct?
 4 A. Yes.
 5 Q. And if this tape-recording captured those
 6 EMTs coming in, including that one who said what he
 7 said, it would be misleading to this jury to
 8 suggest that we don't know who that was? It could
 9 have been anybody? Correct?
 10 A. Correct.
 11 Q. For instance, you did not see some random
 12 guy come into the dining hall, did you --
 13 A. No.
 14 Q. -- and say, hey, there might have been
 15 some organophosphates mixed in? Call 9-1-1, and
 16 we'll come and get you?
 17 A. No.
 18 Q. You didn't see some random guy come in
 19 there and do that, did you?
 20 A. No.
 21 Q. And had you seen some random guy do that,
 22 that would have stuck out in your head; correct?
 23 A. Yes.
 24 Q. Because you would have thought that's
 25 weird? What's some guy showing up here saying all

1 this stuff?
 2 A. Right.
 3 Q. What you saw is a guy in a black
 4 uniform --
 5 If I could have Exhibit 230 up again.
 6 And blow up that fellow.
 7 What you saw was a guy like that come in
 8 with a belt?
 9 A. Yes.
 10 Q. And a radio?
 11 A. Yes.
 12 Q. And -- you know -- fatigues, or black
 13 pants?
 14 A. Yes.
 15 Q. Boots?
 16 A. Yes.
 17 Q. Black shirt?
 18 A. Yes.
 19 Q. Come in and say the things that he said;
 20 correct?
 21 A. Correct.
 22 Q. You have no reason at all, do you, to
 23 believe that Exhibit 742, which is in evidence, is
 24 somehow inaccurately recorded? You have no reason
 25 to believe that, do you?

1 A. No.
 2 Q. In fact, for all you know, it is entirely
 3 accurate of what you heard that night on
 4 October 8, 2009?
 5 A. Yes.
 6 MR. LI: Your Honor, I believe I've come
 7 within the hour and a half promised.
 8 THE COURT: Thank you, Counsel.
 9 Ms. Polk.
 10 MS. POLK: Thank you, Your Honor.
 11 REDIRECT EXAMINATION
 12 BY MS. POLK:
 13 Q. Ms. Gordon, this audio clip that you just
 14 heard, when was the first time that you heard it?
 15 A. When I was here, I believe, in March.
 16 Q. And that's back in March when you thought
 17 you were going to testify then?
 18 A. Yes.
 19 Q. And during that time did Mr. Li meet with
 20 you?
 21 A. Yes.
 22 Q. And Mr. Hughes was also with you?
 23 A. Yes.
 24 Q. At that time Mr. Li played this audio for
 25 you?

1 **A. Yes.**
 2 **Q.** Do you recall at that time what Mr. Li
 3 asked you about whether or not you had heard it?
 4 **A. If I'd ever heard that recording?**
 5 **Q.** Yes.
 6 **A. Yes. He ask me that.**
 7 **Q.** And you recall saying you had heard it?
 8 **A. I'd never heard the recording. I'd heard**
 9 **the words from being in the room while it was**
 10 **happening, but I had not heard the recording.**
 11 **Q.** So you did recall hearing the
 12 announcement that's on this audio?
 13 **A. Yes.**
 14 **Q.** And that's what you told Mr. Li and
 15 Mr. Hughes back then?
 16 **A. Yes.**
 17 **Q.** Do you recall telling Mr. Li and
 18 Mr. Hughes back then that you couldn't recall
 19 whether it was an EMT who had said it?
 20 **A. That's not correct. I was asked a**
 21 **different question about someone else who was in**
 22 **the background, and I couldn't recall who that**
 23 **person was that was asking the question.**
 24 **Q.** What do you recall being asked when you
 25 met with Mr. Li and Mr. Hughes?

1 **A. There was a someone in the background**
 2 **asking a question, and did I recognize that person?**
 3 **I guessed at who I thought it was asking the**
 4 **question.**
 5 **Q.** Is that on this audio that we just heard
 6 in the courtroom -- the person in the background?
 7 **A. Yes.**
 8 **Q.** And what was that question about in the
 9 background?
 10 **A. What symptoms to look for.**
 11 **Q.** Do you recall on October 8, 2009, whether
 12 you were interviewed by the detective before or
 13 after hearing this announcement?
 14 **A. I don't recall. My guess -- I don't**
 15 **recall actually.**
 16 **Q.** Do you recall at what point in the
 17 evening you were interviewed?
 18 **A. Like the time of night it was?**
 19 **Q.** Yes.
 20 **A. I don't recall.**
 21 **Q.** And do you recall if you were
 22 interviewed -- one of the first people to be
 23 interviewed or one of the later participants to be
 24 interviewed?
 25 **A. I think one of the first. Maybe in the**

1 **first half.**
 2 **Q.** You think it's possible you were
 3 interviewed before you heard the person come in and
 4 make the announcement that's on this audio?
 5 **A. I don't know. I can't say for sure.**
 6 **Q.** Do you recall, when you were interviewed,
 7 being asked about what you thought had happened to
 8 Kirby and James?
 9 **A. You're asking do -- I don't understand.**
 10 **Q.** When you were interviewed, do you recall
 11 a question from the detective about what do you
 12 think happened to them? You were in the same place
 13 in the sweat lodge as Kirby Brown and James Shore?
 14 You're okay? What do you think happened to them?
 15 **A. I do recall that question.**
 16 **Q.** Can you tell the jury what your response
 17 was.
 18 MR. LI: Objection. Relevance, speculation.
 19 THE COURT: Ms. Polk, legal response?
 20 MS. POLK: Your Honor, it's a statement that
 21 she made at the time, her presence and impression
 22 close in time to when this announcement was made.
 23 THE COURT: Sustained.
 24 **Q.** BY MS. POLK: Were you aware of the heat
 25 inside the sweat lodge?

1 **A. Yes.**
 2 **Q.** And did you undertake some measures to
 3 deal with the heat?
 4 **A. Yes.**
 5 **Q.** What are those measures?
 6 **A. I laid down flat and breathed as calmly**
 7 **as I could. I visualized and kept breathing.**
 8 **Q.** What did you visualize?
 9 **A. Getting -- completing through the eighth**
 10 **round and what it would look like for me to**
 11 **complete that, and visualized my heart going to**
 12 **normal or what's normal for me. That's what my --**
 13 **what I would visualize.**
 14 **Q.** And who had told you to lay down flat?
 15 **A. James Ray.**
 16 **Q.** And do you know, Ms. Gordon, whether the
 17 carbon dioxide that's in everyone's breath is
 18 heavier than the air around?
 19 MR. LI: Objection, Your Honor. Calls for
 20 speculation. I guess it's asking for an expert
 21 opinion.
 22 THE COURT: Sustained as to foundation.
 23 **Q.** BY MS. POLK: Do you know, Ms. Gordon,
 24 what carbon dioxide is?
 25 **A. Yes. I believe so.**

1 Q. And do you know that it's heavier and
2 that it will fall down lower to the ground?

3 MR. LI: Objection. Form of the question.

4 THE COURT: Sustained. Form the question,
5 foundation.

6 Q. BY MS. POLK: Do you know, Ms. Gordon,
7 whether carbon dioxide had pooled in the area where
8 you were told to lie down?

9 MR. LI: Your Honor.

10 THE COURT: Sustained as to foundation.

11 Q. BY MS. POLK: You were asked some
12 questions about breathing and what you did for your
13 own -- with your breathing to slow down your heart.
14 And I'd like to ask you about the breathing that
15 you heard from Kirby Brown. Is that the type of
16 breathing you heard from Kirby?

17 A. **So you're asking if my breathing was the**
18 **same as her breathing?**

19 Q. Yes.

20 A. **No. Our breathing was not the same.**

21 Q. How was it different?

22 A. **I could hear her breathing.**

23 Q. And what could you hear?

24 A. **I could hear her breathing as if she had**
25 **a really bad cold.**

1 Q. Have you ever heard somebody breathing
2 who is dying?

3 A. **No.**

4 Q. Mr. Li asked you some questions,
5 specifically asked if you knew that Kirby Brown was
6 dying. And you recall your answer?

7 A. **I did not know that she was in that**
8 **state.**

9 Q. Did you know what was normal for inside
10 the sweat lodge?

11 A. **No.**

12 Q. And had there been some information
13 provided to you from Mr. Ray that allowed you to
14 not pay attention to the breathing you were hearing
15 from Kirby?

16 MR. LI: Objection, Your Honor. Form of the
17 question, argumentative, leading.

18 THE COURT: Overruled.

19 THE WITNESS: I need you to ask me again.

20 Q. BY MS. POLK: You said that you did not
21 know that Kirby Brown was dying when you heard her
22 breathing, and you said you did not know what was
23 normal inside the sweat lodge?

24 A. **Correct.**

25 Q. My question is, had Mr. Ray said anything

1 before you went into the sweat lodge that allowed
2 you to not pay attention to Kirby's breathing?

3 MR. LI: Objection, Your Honor. Assumes facts
4 not in evidence. It is actually the subject of a
5 prior court ruling relating to --

6 THE COURT: I'm going to go ahead and take an
7 afternoon break at this time, ladies and gentlemen.
8 Please remember the admonition, of course. And be
9 reassembled at about 10 after. So about 20
10 minutes.

11 And, Ms. Gordon, you are excused for the
12 break at this time as well. Thank you.

13 I'm going to ask the parties to remain a
14 few minutes.

15 (Proceedings continued outside presence
16 of jury.)

17 THE COURT: The record will show that the jury
18 has left the courtroom. In that last question the
19 particular word that concerned me was when it was
20 phrased in terms of "allowed." Other than that I
21 think the question was, essentially, appropriate.

22 Mr. Li, if you have another objection.

23 MR. LI: Well, Your Honor, I guess the issue
24 is this duty question that we've been talking about
25 for a number of times. I think the essential

1 allegation that the state is attempting to adduce
2 from this testimony is that somehow Mr. Ray said
3 things or failed to say things that had the
4 consequences -- you know -- that these folks passed
5 away and failure to, quote, unquote, instruct.

6 This is -- we're about two hours from the
7 filing of our Rule 20 motion. But this is directly
8 on point that there needs to be a duty. The state
9 has never identified one. The Court has found
10 there is not one outside of the statute.

11 As a consequence, the state is,
12 essentially, trying to try Mr. Ray, at least on
13 this particular point -- and I'll argue the Rule 20
14 motion later. At least on this particular point is
15 making the allegation that somehow Mr. Ray failed
16 some duty. That's -- this has been repeated
17 throughout the various last few witnesses, seeking
18 to adduce testimony relating to a nonexistent duty.
19 That's part of the objection.

20 The other part of the objection is just
21 form of the question. Allowed. It assumes facts
22 not in evidence. There is no evidence that
23 Mr. Ray -- we've heard the tape. There is no
24 evidence that Mr. Ray said, don't pay attention to
25 people's breathing. If you hear gurgling noises,

1 don't worry about it. There is nothing like that.
 2 So the prosecutor is trying to make the
 3 leap that the failure to instruct -- you know -- on
 4 breathing, what breathing sounds one should have
 5 inside the sweat lodge, is somehow indicative of
 6 guilt. And that's not allowed.

7 And, secondly, it's assuming facts not in
 8 evidence. The Court has heard Exhibit 731, I
 9 believe, which is the whole tape. He doesn't
 10 mention breathing.

11 THE COURT: And I've talked a lot about
 12 mind-set and why actions were or were not taken,
 13 what kind of effect it had. The key thing, again,
 14 is not to be leading. There was something said
 15 beforehand that had an impact and what was done in
 16 there. And it just has to be avoid. There can't
 17 be a leading aspect to it. That's the ruling.

18 So there can be a question along those
 19 lines, but that was my concern with it.

20 Mr. Li, I want to make sure that 1080
 21 gets marked. That was the admitted exhibit.

22 MR. LI: Sure. Shall we pull it out?

23 THE COURT: Yes. If you can do that, we can
 24 go ahead and take the recess.

25 (Recess.)

1 (Proceedings continued in the presence of
 2 jury.)

3 THE COURT: The record will show the presence
 4 of Mr. Ray, the attorneys, the jury. Ms. Gordon is
 5 on the stand.

6 Ms. Polk.

7 MS. POLK: Thank you.

8 Q. Ms. Gordon, just a couple of quick
 9 questions. You had testified earlier that Mr. Ray
 10 had said that people might pass out inside the
 11 sweat lodge ceremony. Is that true?

12 A. Yes.

13 Q. Do you recall when it was that he said
 14 that to you?

15 A. During the briefing in the classroom.

16 Q. Why were you not concerned when Kirby
 17 Brown was passed out?

18 A. Partly because of that statement. And I
 19 had no expectation of what -- nothing other than
 20 what you just said.

21 Q. Do you know if during the sweat lodge --
 22 or do you recall if during the sweat lodge ceremony
 23 Mr. Ray made any statements about it being okay to
 24 pass out?

25 A. I think during the briefing I heard

1 something like that.

2 Q. And how about during the sweat lodge
 3 ceremony itself?

4 A. I don't recall that.

5 Q. Do you still have Exhibit 647 in front of
 6 you?

7 A. Yes.

8 Q. That's the transcript from your interview
 9 on October 12, 2009?

10 A. Yes.

11 Q. Will you take a look at page 13, lines 1
 12 through 5.

13 MR. LI: Counsel, what page?

14 MS. POLK: 13.

15 THE WITNESS: Okay.

16 Q. BY MS. POLK: Does that refresh your
 17 recollection?

18 A. It doesn't. I don't remember in this
 19 moment, but I see what I had said here.

20 Q. And would you tell the jury what you said
 21 back then about whether or not Mr. Ray made any
 22 statements inside during the sweat lodge ceremony
 23 about it being okay to pass out.

24 A. That it was okay to pass out.

25 Q. Thank you, Ms. Gordon.

1 Thank you, Your Honor.

2 THE COURT: Are there any questions?

3 There appear to be questions from the
 4 jury.

5 Counsel, if you would please approach and
 6 review the questions.

7 (Sidebar conference.)

8 THE COURT: Question No. 1?

9 MS. POLK: No objection.

10 MR. LI: No objection.

11 THE COURT: No objection to that.
 12 Number 2?

13 MR. LI: No objection.

14 MS. POLK: No objection.

15 THE COURT: No objection to 2.

16 MS. POLK: State objects. Calls for
 17 speculation.

18 MR. LI: Many similar questions have been
 19 asked by the state relating to this. We don't
 20 object to the question.

21 THE COURT: It's speculation. So I'm not
 22 going to ask it.

23 (End of sidebar conference.)

24 THE COURT: Ms. Gordon, I'll ask the
 25 questions. And the lawyers may want to follow up

1 with their own. The first question. Did James
2 Shore's voice sound weaker after assisting Sidney
3 in getting out of lodge?

4 THE WITNESS: I had not heard his voice prior
5 to compare it if it was weaker from another point.
6 That was the first time I had heard him say
7 something other than him being next to me.

8 THE COURT: Lawyers may wish to follow up.
9 Ms. Polk?

10 MS. POLK: Just briefly.

11 FURTHER REDIRECT EXAMINATION

12 BY MS. POLK:

13 Q. Ms. Gordon, you had testified that you
14 heard Mr. Shore call out or say something between
15 round 6 and round 7 and then again between round 7
16 and round 8. Can you compare the tone of the voice
17 between those two times that you heard him speak.

18 A. They were similar. Again, more of a --
19 not a talking voice, not a yelling voice the first
20 time. And the first -- the second time was more a
21 statement -- not a statement but a -- just putting
22 it out there. We need help over here. So they
23 were similar to me. It was similar.

24 Q. The second time you said it was just
25 putting it out there?

1 A. Yes.

2 Q. And what about the first time?

3 A. The first time was maybe more demanding
4 but not any way of projecting his voice.

5 Q. And more demanding in what sense?

6 A. Clear that that's what he was asking for.

7 Q. "That" being what?

8 A. We need help over here.

9 Q. And would you agree when you're
10 interviewed by the detective on October 12 of 2009,
11 you told him then that you heard Mr. Shore yell the
12 first time?

13 A. That's what I said in there. But I
14 clarified what I meant by that, which is that his
15 voice was not projected.

16 Q. Thank you.

17 THE COURT: Mr. Li?

18 RECROSS-EXAMINATION

19 BY MR. LI:

20 Q. Ms. Gordon, you have no idea one way or
21 another whether Mr. Ray heard anything that
22 Mr. Shore said?

23 A. I do not.

24 Q. You have no idea whether anybody sitting
25 next to Mr. Ray heard any of the things that you

1 heard?

2 A. I do not.

3 Q. And, in fact, Mr. Ray was, basically, the
4 distance between you and him right now; correct?

5 A. Probably. Yes.

6 Q. And there were a number of people between
7 you; correct?

8 A. Yes.

9 Q. And there was a fire pit or a rock pit
10 between you?

11 A. Yes.

12 Q. And you have no idea whether that voice
13 projected to the other side of the sweat lodge?

14 A. I have no idea.

15 MR. LI: Nothing further.

16 THE COURT: Next question. Has James Ray,
17 James Ray International, or any of its employees
18 ever been clients of yours or clients of your
19 agency?

20 THE WITNESS: No. Not at all.

21 THE COURT: Any follow up?

22 MS. POLK: No, Your Honor.

23 MR. LI: No, Your Honor.

24 THE COURT: Again, ladies and gentlemen, I do
25 make the decisions as a legal matter on questions.

1 And at this time, Ms. Gordon, you will be
2 excused temporarily. Because there is a
3 possibility you may be called back, you need to
4 continue to follow the rule of exclusion of
5 witnesses in all respect. At least for now you are
6 excused at this time.

7 Thank you.

8 Mr. Hughes or Ms. Polk.

9 MR. HUGHES: Thank you, Your Honor. The state
10 calls Sean Ronan.

11 THE COURT: Okay.

12 Ms. Rybar, Sean Ronan.

13 Sir, please step where the bailiff is
14 directing you.

15 And then raise your right hand and be
16 sworn by the clerk.

17 SEAN J. RONAN

18 having been first duly sworn upon his oath to tell
19 the truth, the whole truth, and nothing but the
20 truth, testified as follows:

21 THE COURT: Please be seated here to my right.
22 Sir, would you please start by stating and spelling
23 your full name.

24 THE WITNESS: Sean Joseph Ronan; S-e-a-n,
25 J-o-s-e-p-h, R-o-n-a-n.

1 THE COURT: Thank you.
 2 Mr. Hughes.
 3 MR. HUGHES: Thank you.
 4 DIRECT EXAMINATION
 5 BY MR. HUGHES:
 6 Q. Good afternoon. Sir, tell us what you do
 7 for a living.
 8 A. I have a small business where I do sales
 9 processing for large companies.
 10 Q. And I understand because of some business
 11 commitments, you're unable to return to court next
 12 Tuesday; correct?
 13 A. Correct.
 14 Q. Ms. Do and I are going to endeavor to try
 15 and get you on and off this afternoon. So I
 16 apologize if I speak a little more quickly than
 17 normal.
 18 Can you tell us whether you attended the
 19 Spiritual Warrior event in 2009.
 20 A. Yes, I did.
 21 Q. And as part of that event, did you attend
 22 a sweat lodge ceremony?
 23 A. Yes, I did.
 24 Q. Can you tell us when you first learned
 25 there would be a sweat lodge ceremony.

1 A. At the event.
 2 Q. And had you ever been in a sweat lodge
 3 prior to that?
 4 A. I have not.
 5 Q. And had you been in hot environments,
 6 like saunas or such things, before attending the
 7 sweat lodge?
 8 A. Yes, I have.
 9 Q. And can you tell us briefly what those
 10 are.
 11 A. Sauna, steam rooms, and I did some bikram
 12 yoga.
 13 Q. What's bikram yoga?
 14 A. It's a form of yoga that you do in a room
 15 that's 104 degrees.
 16 Q. And can you tell us, then, do you recall
 17 where you were sitting inside the sweat lodge when
 18 the ceremony began?
 19 A. Yes, I do.
 20 Q. I'm going to show you on a chart here
 21 what's marked as Exhibit 414. It's just sort of a
 22 little diagram. If you assume that this area here
 23 is the entrance, and obviously the pit
 24 self-explanatory. Can you mark on the screen in
 25 front of you where you were sitting at the

1 beginning of the ceremony.
 2 And at some point in time did you move
 3 from that location?
 4 A. I moved behind -- there was two rows of
 5 people. And I was closer to the pit. And at some
 6 point I moved back and pretty much laid down, but
 7 took up two spots there.
 8 Q. If you called this location approximately
 9 the "12:00 o'clock location," where did you move,
 10 then, when you moved to the back row?
 11 A. Just straight back.
 12 Q. And at what round did you move to the
 13 back row?
 14 A. I believe it was around the fourth round.
 15 Q. During the first three rounds, can you
 16 tell us how your body was positioned inside in that
 17 front row. In other words, were you standing?
 18 Were you kneeling? Were you sitting?
 19 A. Sure. I was sitting down in front of --
 20 I believe it was Mike Rock, who is sort of to my
 21 left. Sitting down with my legs stretched forward.
 22 Q. How much distance as you sat down, then,
 23 in the front row was there between your feet and
 24 the pit?
 25 A. Three to four feet.

1 Q. And once you moved to the back row, can
 2 you recall who was sitting on either side of you?
 3 A. Mike Rock was on my left, and I think
 4 Tess was on my right.
 5 Q. Prior to entering the sweat lodge, did
 6 you think you would be safe inside?
 7 A. Yes.
 8 Q. Why is that?
 9 A. I've done events with James since '06,
 10 like, March '06. I trust him. I had faith in him.
 11 Done some extreme things. I'm an extreme guy.
 12 Seemed like it would work out fine.
 13 Q. Do you recall how long the sweat lodge
 14 ceremony lasted?
 15 A. I don't know how long it lasted.
 16 Q. Were you conscious for the entire sweat
 17 lodge ceremony?
 18 A. I was not.
 19 Q. At some point do you recall what your
 20 last moment of consciousness was before you lost
 21 consciousness?
 22 A. I do.
 23 Q. Can you describe -- do you know what
 24 round you were in when that happened?
 25 A. I believe it was during the fifth round.

1 Q. And can you tell us what you recall going
2 on around you before you lost consciousness.

3 A. **A lot of James's chants, Hebrew chants,**
4 **bringing in of the stones, people. I remember**
5 **Kirby was -- kept saying, we can do it. We can do**
6 **it. We can do it. Tess, on my right, was**
7 **comforting another participant, talking to her,**
8 **kind of singing in her ear.**

9 **That's about what I can remember.**

10 Q. And do you recall hearing anything that
11 would lead you to believe people or persons were in
12 distress inside?

13 A. **I do not.**

14 Q. At any time when you were inside the
15 sweat lodge?

16 A. **No.**

17 Q. Do you recall whether you were awake when
18 someone may have fallen into the rock pit?

19 A. **I do recall that.**

20 Q. Okay. Is it your belief, then, that you
21 may have lost consciousness after that point?

22 A. **I believe I was laying on my stomach when**
23 **that happened. I didn't see it. But I do recall**
24 **hearing somebody say, watch out, Lou. And, he's in**
25 **the pit, or something like that.**

1 Q. Do you know whether you regained
2 consciousness after you lost it while you were
3 still inside the sweat lodge?

4 A. **I did not.**

5 Q. And you mentioned you were laying on your
6 stomach. When you moved to the back row, what was
7 your body position? In other words, standing?
8 kneeling? sitting?

9 A. **First I was laying on my back. And then**
10 **I laid on my stomach to get closer to the ground.**

11 Q. Do you recall when you made the
12 transition from your back to your stomach?

13 A. **It was probably during that fifth round.**

14 Q. Do you recall -- and, again, I'm trying
15 to pin down when it is that you lost
16 consciousness -- the possibility of someone outside
17 yelling about thinking they were dying or having a
18 heart attack?

19 MS. DO: Objection. Speculation and leading.

20 MR. HUGHES: Let me reask a different way.

21 THE COURT: As to form.

22 Q. BY MR. HUGHES: Do you recall some sort
23 of a commotion outside the sweat lodge when you
24 were inside during the ceremony?

25 A. **I do not.**

1 Q. Do you recall any comments by anybody
2 about light inside the sweat lodge?

3 A. **I do not.**

4 Q. Do you recall whether anybody may have
5 been lifting or not lifting the bottom of the sweat
6 lodge membrane, for want of a better word?

7 A. **I do not.**

8 Q. Do you recall what the temperature was
9 like during those first five rounds that you were
10 conscious in this back area that you were in?

11 A. **Extremely hot.**

12 Q. How would you compare that to the sauna
13 or the bikram yoga that you've done?

14 A. **The bikram was tolerable, and this became**
15 **a point where it was not tolerable.**

16 Q. Do you recall whether there was any
17 humidity back there?

18 A. **I don't recall humidity. No.**

19 Q. Do you recall whether hearing any persons
20 make comments about the temperature or the humidity
21 or the air quality?

22 A. **I don't recall.**

23 Q. Okay. And do you recall whether you felt
24 any difference in the air quality when the flap was
25 opened as opposed to when the flap was closed?

1 A. **I didn't notice any change when it was**
2 **open.**

3 Q. Do you recall at some point hearing a
4 comment from Megan Fredrickson to James Ray?

5 A. **Yes.**

6 Q. And at what round was that comment?

7 A. **I believe it was the fourth round.**

8 Q. And what did Megan tell James Ray?

9 MS. DO: Objection. Hearsay.

10 THE COURT: Overruled.

11 You may answer that.

12 THE WITNESS: I heard her say, James, these
13 people are your responsibility.

14 Q. BY MR. HUGHES: And what sort of strength
15 or loudness or lack of loudness -- that's a bad
16 question. How loud was her voice when she made
17 that comments to Mr. Ray?

18 A. **It was enough for me to hear it clearly**
19 **from this -- from where she, I believe, was sitting**
20 **was there to where I was sitting.**

21 Q. And did you hear Mr. Ray respond to
22 Ms. Fredrickson?

23 A. **I did not.**

24 Q. And was the flap open or closed when that
25 occurred?

1 **A. I believe the flap was open, and he was**
 2 **asking for a large quantity of stones.**
 3 **Q. Do you know how many stones were brought**
 4 **in during the five rounds you were alert for?**
 5 **A. The first two rounds was 12 or 13 for the**
 6 **first round; 10 or 11 for the second round; a short**
 7 **number for the third round, I think, 4 or 5. And**
 8 **then the next round it was a large quantity. Don't**
 9 **know. My -- what I can recall is 17. But I don't**
 10 **know that that's correct. It's vague.**
 11 **Q. What was your level of alertness as time**
 12 **went by while you were inside the sweat lodge?**
 13 **A. Up until that fourth round, I was pretty**
 14 **alert. I -- when the stones were brought in, I**
 15 **wanted to continue to give my best. So I sat up,**
 16 **still sitting in front and wanted to -- you know --**
 17 **participate as I started the ceremony. And then I**
 18 **held up there for a few moments, and that's when I**
 19 **laid down.**
 20 **Q. What's your next memory, then, after**
 21 **losing consciousness inside the sweat lodge?**
 22 **A. My next memory was coming to, laying**
 23 **outside the sweat lodge on my side like this,**
 24 **unable to open my eyes, extreme pain in the back of**
 25 **my head and my back and vomiting.**

1 **Q. Now, using this chart as just sort of a**
 2 **rough diagram, and, again, I'm referring to**
 3 **Exhibit 414, do you -- can you show us**
 4 **approximately where you were located when you came**
 5 **to.**
 6 **A. I have no idea where I was.**
 7 **Q. Okay. Were you inside or outside the**
 8 **lodge?**
 9 **A. I was outside the lodge. I don't know**
 10 **where I was in placement of the circle.**
 11 **Q. And do you know whether the -- when you**
 12 **came to, had the sweat lodge ceremony ended or was**
 13 **it still going on?**
 14 **A. I had assumed it was over. But I didn't**
 15 **know for certain what was going on. And that was**
 16 **what I kept asking -- what's going on. What's**
 17 **going on.**
 18 **Q. Were there any people around you?**
 19 **A. There was a gentleman that was sitting**
 20 **with me. I can't recall his name. He's an older**
 21 **gentleman, slender. I believe him and his wife got**
 22 **out after the first or second round. And he was**
 23 **sitting with me comforting me. And that's what I**
 24 **remember.**
 25 **Q. Do you know whether you were on the**

1 **ground or on a tarp?**
 2 **A. I don't recall if I was on the ground or**
 3 **tarp.**
 4 **Q. At some point did you begin to perceive**
 5 **whether other people around you were -- appeared to**
 6 **be in distress outside the lodge?**
 7 **A. Yeah. I could hear compressions going**
 8 **on. And I had a feeling it was Kirby just because**
 9 **there was sounds coming out of her. And somehow I**
 10 **just knew it was her.**
 11 **Q. You said, "compressions going on." What**
 12 **do you mean by that?**
 13 **A. It sounded like they were resuscitating.**
 14 **Q. And could you see Kirby?**
 15 **A. I couldn't. At that point I still had my**
 16 **eyes closed. I couldn't open my eyes yet.**
 17 **Q. And were you aware of any other**
 18 **persons -- what made you believe, then, it was**
 19 **Kirby that was receiving this compressions?**
 20 **A. I asked.**
 21 **Q. Who did you ask?**
 22 **A. The gentleman that was sitting with me.**
 23 **Q. And did you become aware at some point of**
 24 **anyone else who appeared to be in distress?**
 25 **A. I did not.**

1 **Q. What happened to you next after that?**
 2 **A. I was able to open my eyes. I remember**
 3 **the paramedics showing up and working with me,**
 4 **trying to drink fluids. And it was the paramedics**
 5 **just working on me and trying to take care of me.**
 6 **Q. You mentioned it took you some period of**
 7 **time to open your eyes and look around. Was there**
 8 **anything obstructing or wrong with your eyes?**
 9 **A. I -- it was just -- I was unable to open**
 10 **them for a short time.**
 11 **Q. And when the paramedics arrived, did**
 12 **they -- did they treat you and release you, or what**
 13 **happened?**
 14 **A. When they arrived, they were treating me,**
 15 **trying to cool me down. They were trying to get an**
 16 **I.V. in my arm, but they were unsuccessful. And**
 17 **then I remembered that I went into some type of a**
 18 **shock. I started shaking vigorously and in extreme**
 19 **pain.**
 20 **Q. How did they try and cool you down?**
 21 **A. They had cut my pants off of me. And I**
 22 **believe they used water. I'm not too sure.**
 23 **Q. Do you know whether you'd been -- anyone**
 24 **had wetted you down before the EMTs arrived?**
 25 **A. I don't know.**

1 Q. Do you remember if you were wet or not or
2 if the ground was wet around you before the EMT's
3 arrived?

4 A. I don't know.

5 Q. And after the EMTs give you some
6 treatment, did they release you or take you to the
7 hospital? Or what happened to you?

8 A. They loaded me up and put me in the
9 ambulance and took me to the hospital.

10 Q. And can you -- how long were you at the
11 hospital for?

12 A. I was there overnight and ready to be
13 released at 8:00 or 9:00 in the morning, I believe.

14 Q. And did you incur some expenses because
15 of the ambulance and the hospitalization?

16 MS. DO: Objection, Your Honor. Relevance.

17 THE COURT: Sustained.

18 Q. BY MR. HUGHES: Let me ask you this:
19 After this was all said and done, did you end up
20 filing a lawsuit against any entities because of
21 what happened?

22 A. Yes, I did.

23 Q. Has the lawsuit -- the filing of a
24 lawsuit influenced or impacted your testimony at
25 all today?

1 A. No.

2 Q. And prior to today testifying --
3 actually, did you come out once before to testify,
4 and because of scheduling you didn't get to
5 testify?

6 A. Yes. I did come up once before.

7 Q. When did you come out once before to
8 testify?

9 A. I believe it was towards the end of
10 March.

11 Q. And when you came out, did you -- was
12 there an interview after that with Ms. Do and
13 myself?

14 A. Yes.

15 Q. And did you discuss some exposure you had
16 had to some media after the -- this trial had
17 already begun?

18 A. Yes.

19 Q. Has any of the media exposure that you've
20 seen influenced your testimony today?

21 A. No.

22 Q. Did you have any symptoms or anything
23 that you noticed wrong with you after you were
24 released from the hospital that you didn't have
25 going into the sweat lodge -- any symptoms or

1 signs?

2 A. Yeah. I had a bad flu for about a week
3 and a half. I had a urinary infection from the
4 catheter tube. Those were immediate. I went into
5 depression and some slight post-traumatic stress.

6 Q. While you were awake inside the sweat
7 lodge and conscious, did you -- were you aware of
8 Kirby or James Shore?

9 A. Was I aware -- yes. They were sitting
10 towards my left.

11 Q. Did anything in particular draw your
12 attention to them?

13 A. The last thing I saw with James was he
14 was laying slumped over when I laid on my back at
15 the fourth round. James and I were standing next
16 to each other when we went in. And one of the
17 things he said was that he was really looking
18 forward to the lodge and sitting in front because
19 he knew we were going to be doubled up. Because he
20 always had a fear of doing that. So this was going
21 to be a chance for him to break through that fear.

22 Q. And, sir, showing you what's marked as
23 Exhibit 144, which is a photograph, do you happen
24 to recognize yourself or Mr. Shore?

25 A. No, I don't.

1 Q. Do you recall at what point you entered?
2 Were you in the front of line, the middle the line,
3 or the end of the line?

4 A. I was at the end of the line.

5 Q. Do you know how you got out of the lodge?

6 A. I do not.

7 Q. Do you know who dragged you out?

8 A. I do not. I was told, but at the time I
9 don't. So I know after the fact.

10 Q. The comment that you testified to by
11 Megan Fredrickson, was that comment in response to
12 something that you perceived going on within the
13 sweat lodge?

14 A. Yeah. I believe it was when he asked for
15 that large amount of rocks to be brought in.

16 Q. And who is the "he" you're talking about?

17 A. James.

18 Q. Thank you, sir.

19 THE COURT: Thank you, Mr. Hughes.

20 Ms. Do.

21 MS. DO: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. DO:

24 Q. Good afternoon, Mr. Ronan. Let me
25 introduce myself. We've spoken on the phone, but

1 we have not met in person. My name is Truc Do, and
2 I represent Mr. Ray.

3 And you and I spoke on the telephone
4 briefly. Mr. Hughes was on that phone call;
5 correct?

6 **A. Correct.**

7 **Q.** And Mr. Hughes is correct. He and I had
8 an agreement that we were going to keep you short
9 so we could finish today.

10 **A. Okay.**

11 **Q.** I naturally speak fast, so if you need to
12 slow me down, please just tell me to do so.

13 **A. Certainly.**

14 **Q.** Okay? You had told Mr. Hughes that the
15 first time you learned of the sweat lodge event was
16 at the Spiritual Warrior event; is that correct?

17 **A. Correct.**

18 **Q.** Now, I understand the jury has heard from
19 other participants that prior to coming to the
20 retreat, you had received some paperwork.

21 Do you recall that?

22 **A. Correct.**

23 **Q.** And some of that paperwork included
24 information about what would be going on at the
25 retreat; correct?

1 **A. Yes.**

2 MS. DO: If I may approach?

3 THE COURT: You may.

4 **Q.** BY MS. DO: Let me show you what's been
5 marked as Exhibit 441 and what has been introduced
6 already -- or admitted into evidence, Exhibit 479.

7 Do you recognize those documents?

8 **A. I do.**

9 **Q.** It has your name on it; correct?

10 **A. Uh-huh.**

11 **Q.** Now, Exhibit 441 is a packet that you
12 received from the James Ray International
13 corporation; correct?

14 **A. This is 441?**

15 **Q.** Yes.

16 **A. Yes.**

17 **Q.** Would you flip through the pages and make
18 sure that you received that and that you, in fact,
19 signed acknowledging that you received it.

20 **A. That I received it? This was signed -- I**
21 **believe this was signed at the time of the sweat**
22 **lodge. Wasn't it?**

23 **Q.** Correct. So if you can confirm so we
24 know it's your document.

25 **A. Oh. Yes. Yes.**

1 **Q.** All right.

2 Any objections to its admission, Counsel?

3 MR. HUGHES: No. 441?

4 MS. DO: Yes.

5 MR. HUGHES: No objection.

6 THE COURT: 441 is admitted.

7 (Exhibit 441 admitted.)

8 MS. DO: I'll now publish it to the jury.

9 **Q.** And, as you just mentioned, this is a
10 document that you believe you signed on the date
11 that you arrived to the sweat lodge ceremony;
12 correct?

13 **A. Correct.**

14 **Q.** Now, to your knowledge, did you actually
15 receive a packet from the James Ray International
16 corporation sometime in July, a month or so before
17 or few months before the sweat lodge event?

18 **A. Yes.**

19 **Q.** And in that packet of information, it
20 also contained advance copies of the waivers that
21 we now see up there -- Exhibit 441; correct?

22 **A. Yes.**

23 **Q.** And it also contained a copy of the
24 waiver that has been admitted into evidence --
25 Exhibit 479 -- which is from Angel Valley; correct?

1 **A. Correct.**

2 **Q.** And so many months before you actually
3 showed up to the retreat, you were given
4 information regarding what would happen at the
5 retreat; correct?

6 **A. Excuse me. This is not my document.**

7 **Q.** Let me approach again. Thank you. I'll
8 make that correction. But let's just move on.

9 You did receive an information packet
10 that contained the waivers that you ultimately
11 signed when you showed up; right?

12 **A. As we do with all the events. Correct.**

13 **Q.** And so you had an opportunity to read
14 through these documents; correct?

15 **A. Correct.**

16 **Q.** And did you do that?

17 **A. No.**

18 **Q.** All right. And obviously that would have
19 been your choice; correct?

20 **A. Sure.**

21 **Q.** And if you had read through the
22 documents, Mr. Ronan, would you have made note of
23 this paragraph in which it was disclosed to you
24 that you would be participating in a sweat lodge
25 ceremony that was described --

- 1 **A. Certainly.**
 2 **Q.** And I know it's difficult to read. A
 3 ceremonial sauna involving tight, enclosed spaces
 4 and extreme temperatures; correct?
 5 **A. Yes.**
 6 **Q.** Now, you had indicated that you are an
 7 extreme guy. Do you remember that?
 8 **A. Uh-huh.**
 9 **Q.** Could you tell the jury what you mean
 10 when you say you are an extreme guy.
 11 **A. I go for things full on. I ride a**
 12 **motorcycle. I enjoy riding a motorcycle, jump out**
 13 **of an airplane, extreme yoga, things like that.**
 14 **Q.** You jump out of airplanes?
 15 **A. Uh-huh.**
 16 **Q.** That's a very high-risk activity?
 17 **A. Sure.**
 18 **Q.** Right? But you get enjoyment out of it?
 19 **A. Correct.**
 20 **Q.** It's a rush?
 21 **A. Yeah.**
 22 **Q.** Yes? And you know that there are risks
 23 to your physical well being involved in that
 24 activity or sport?
 25 **A. Yes.**

- 1 **Q.** But you choose to do it; correct?
 2 **A. Yes.**
 3 **Q.** Because it's in your nature to be
 4 extreme?
 5 **A. Uh-huh.**
 6 **Q.** Is that yes?
 7 **A. Yes.**
 8 **Q.** You also ride motorcycles?
 9 **A. Yes.**
 10 **Q.** Also an extreme, risky activity?
 11 **A. Very.**
 12 **Q.** Okay. This is 478. This is the correct
 13 Angel Valley waiver you signed?
 14 **A. Yes, it is.**
 15 **Q.** What other extreme activities do you
 16 engage in other than motorcycle riding, jumping out
 17 of airplanes?
 18 **A. I would have to say it's around**
 19 **participating in my life, in others' lives, by**
 20 **taking risks and having in-depth conversations,**
 21 **challenging conversations, things like that.**
 22 **Q.** Why do you engage in those kinds of
 23 activities when you know going in that it involves
 24 those kinds of risk?
 25 **A. Because it turns me on.**

- 1 **Q.** All right. And that's one of the things
 2 that attracted you to the James Ray International
 3 events; correct?
 4 **A. What attracted me to the organization?**
 5 **Q.** Yes.
 6 **A. Yes.**
 7 **Q.** Okay. In addition to the programs that
 8 help you improve your life; correct?
 9 **A. Correct.**
 10 **Q.** You were also attracted to the activities
 11 involved; correct?
 12 **A. Yes. As I participated in them, yes.**
 13 **Q.** All right. So nothing new to you?
 14 **A. No.**
 15 **Q.** All right. Now, you also indicated that
 16 you felt safe going into the sweat lodge; correct?
 17 **A. Correct.**
 18 **Q.** And that's because, one, you have done
 19 extreme activity in your life; is that right?
 20 **A. Correct.**
 21 **Q.** And you have trust in Mr. Ray?
 22 **A. Uh-huh.**
 23 **Q.** Is that right?
 24 **A. Yes.**
 25 **Q.** And you also told the police in prior

- 1 statements that you felt safe going into the sweat
 2 lodge because you talked to friends who had done
 3 them; correct?
 4 **A. I have friends, personal friends, that**
 5 **have -- participate in sweat lodges on a regular**
 6 **basis. Yes.**
 7 **Q.** And you spoke to those friends about what
 8 to expect at the sweat lodge; correct?
 9 **A. Yes.**
 10 **Q.** And so you knew before going into the
 11 event that you were going to be engaged in a sweat
 12 lodge event because you had talked to your friends;
 13 correct?
 14 **A. Prior to the event?**
 15 **Q.** Yes.
 16 **A. No. Those were conversations after the**
 17 **event. I'm sorry. Can you readjust that.**
 18 **Q.** You had conversations with some friends
 19 who had done sweat lodges; correct?
 20 **A. I have had conversations with my friends**
 21 **who have done sweat lodges. Yes.**
 22 **Q.** And did these conversations take place at
 23 the retreat?
 24 **A. They were --**
 25 **Q.** When did these conversations take place?

1 **A. Well, I have -- hang on a second.**
 2 **Q. Take your time.**
 3 **A. I have had conversations with friends who**
 4 **have participated in sweat lodges prior to**
 5 **participating in the Spiritual Warrior seminar.**
 6 **Yes.**
 7 **Q. Okay. And based upon those**
 8 **conversations, you got some comfort about going**
 9 **into the one that you were going to do; correct?**
 10 **A. It made me feel better about knowing that**
 11 **I was going to participate in James's sweat lodge.**
 12 **Yes.**
 13 **Q. And what did you learn from the friends**
 14 **who participated in sweat lodges?**
 15 **A. That you get to have some experiences**
 16 **where it's almost like a rebirthing. You get to --**
 17 **you get to connect with your God. You get to have**
 18 **personal breakthroughs. Sometimes you battle**
 19 **demons, your personal demons, in sweat lodges.**
 20 **Q. Do you recall your friends telling you**
 21 **anything else about the sweat lodge experience?**
 22 **A. That's the main thing I remember.**
 23 **Q. Do you recall telling a detective that**
 24 **you felt safe going into the sweat lodge, Mr. Ray's**
 25 **sweat lodge ceremony, because your friends had told**

1 you that it was extreme?
 2 **A. I don't recall that at this second. No.**
 3 **Q. Okay. Would it refresh your recollection**
 4 **if you were to look at a transcript?**
 5 **A. Sure.**
 6 **Q. Let me -- we'll get back to that. But**
 7 **let me -- let me start by giving the jury a little**
 8 **bit of background on your various statements in**
 9 **this case. Okay?**
 10 **A. Okay.**
 11 **Q. Now, I understand on October 8, 2009, you**
 12 **were one of the participants who were sick and were**
 13 **transported to hospital. Correct?**
 14 **A. October --**
 15 **Q. 8, 2009.**
 16 **A. Was that the event? I thought it was the**
 17 **9th.**
 18 **Q. October 8, 2009.**
 19 **A. Okay.**
 20 **Q. You were taken to the hospital.**
 21 **A. Yes.**
 22 **Q. And so you didn't give a statement at the**
 23 **scene; correct?**
 24 **A. Correct.**
 25 **Q. At the hospital you may have spoken to a**

1 doctor; correct?
 2 **A. A doctor and a detective.**
 3 **Q. All right. And the detective who spoke**
 4 **to you on October 8 -- do you remember his or her**
 5 **name?**
 6 **A. I do not.**
 7 **Q. Okay. Do you remember what you told him**
 8 **or her?**
 9 **A. No, I don't.**
 10 **Q. Okay. The next time you spoke to a**
 11 **detective was on October 14, 2009?**
 12 **A. Yes.**
 13 **Q. And that was with a Detective Shonna**
 14 **Willingham?**
 15 **A. Uh-huh.**
 16 **Q. Is that yes?**
 17 **A. Yes.**
 18 **Q. Was that on the telephone?**
 19 **A. Yes, it was.**
 20 **Q. And that was audio recorded; correct?**
 21 **A. As far as I understand, yes.**
 22 **Q. And have you had a chance to review the**
 23 **transcript of that audio recording?**
 24 **A. I reviewed it last March when I was**
 25 **preparing to come out here.**

1 **Q. Okay. Let me show you for**
 2 **identification -- this is Exhibit 789. Is that the**
 3 **transcript that you reviewed?**
 4 **A. Yes, it is.**
 5 **Q. And when Detective Shonna Willingham**
 6 **telephoned you, she identified who she was;**
 7 **correct?**
 8 **A. Correct.**
 9 **Q. She said she was a detective with the**
 10 **Yavapai County Sheriff's Office?**
 11 **A. Yes.**
 12 **Q. And at the time, Mr. Ronan -- rather than**
 13 **reading, if you need to refresh, we'll look at it.**
 14 **When she called you, you were actually getting an**
 15 **oil change.**
 16 **Do you remember that?**
 17 **A. Yes.**
 18 **Q. And she asked you if it was a good time**
 19 **to go over questions?**
 20 **A. Yes.**
 21 **Q. And you said it was fine?**
 22 **A. Yes.**
 23 **Q. And the interview was about 20 minutes;**
 24 **right?**
 25 **A. Yes.**

1 Q. And at the end of the interview
 2 Detective Willingham concluded the interview by
 3 asking you, is there anything -- I know I've asked
 4 you a lot of different things. Is there anything
 5 that's extremely important that you think that I
 6 should know about this event?
 7 Do you remember that question?
 8 A. I do.
 9 Q. And that was at the very end of your
 10 interview; correct?
 11 A. Yes.
 12 Q. And you at that time didn't volunteer any
 13 additional information other than what you said in
 14 the 20 minutes; correct?
 15 A. Correct.
 16 Q. She then asked you, if you think of
 17 something that would be really important for me to
 18 know, can I give you my name and number; correct?
 19 A. Yes.
 20 Q. Do you remember that?
 21 A. I -- I suppose it's in here.
 22 Q. Okay. Let me show you so that we're not
 23 guessing.
 24 A. Sure.
 25 Q. I'm showing you page 9, line 25 to 26.

1 Detective Willingham provided you with her name and
 2 number in case you recalled any additional
 3 information that you needed to provide her;
 4 correct?
 5 A. Yes.
 6 Q. And you never did call
 7 Detective Willingham back with any additional
 8 information; is that correct?
 9 A. Correct.
 10 Q. Now, the next contact that you had with
 11 anyone from law enforcement or the state was with
 12 Detective Diskin; is that correct?
 13 A. Yes.
 14 Q. And that was also a telephonic phone
 15 call, telephonic interview?
 16 A. Yes.
 17 Q. Do you know whether or not that was
 18 recorded?
 19 A. I don't believe it was recorded.
 20 Q. Okay. And that interview was about an
 21 hour?
 22 A. Yes.
 23 Q. It was in January of this year?
 24 A. Yes.
 25 Q. And then after that telephone call with

1 Detective Diskin that he didn't record, you then
 2 had a conversation or communications with the
 3 prosecutors; correct?
 4 A. Yes.
 5 Q. At some point in this case, the state
 6 sent you a letter and a subpoena telling you that
 7 you were going to testify in this trial.
 8 Do you remember that?
 9 A. Yes.
 10 Q. And with that letter you also got a copy
 11 of a court order?
 12 A. Yes.
 13 Q. And do you remember what that court order
 14 told you?
 15 A. To refrain or not look at any media
 16 coverage of the trial in any form.
 17 Q. Did you read the court order when you
 18 received it?
 19 A. Yes. I received two of them, actually.
 20 Q. Okay. Let me approach you.
 21 A. Two different times.
 22 Q. I'm going to show you a letter that's
 23 signed by Sheila Sullivan Polk, Yavapai County
 24 Attorney. It's dated February 28, 2011. And the
 25 second page, that is an attachment, is a court

1 order; correct?
 2 A. Yes.
 3 Q. And that was a letter from the state
 4 telling you that you were now a witness in this
 5 trial? Yes?
 6 A. Yes.
 7 Q. That you would be testifying before this
 8 jury?
 9 A. Yes.
 10 Q. And the court order was an order that
 11 specifically precluded you from going onto the
 12 internet; correct?
 13 A. Correct.
 14 Q. Watching TV?
 15 A. Correct.
 16 Q. Or talking to other witnesses; right?
 17 A. Yes.
 18 Q. And when you read it, you understood it?
 19 A. Yes.
 20 Q. Specifically in that letter, Mr. Ronan,
 21 did the state tell you -- actually, in the order by
 22 Judge Darrow, the Court directs that all
 23 prospective witnesses shall not view television
 24 coverage or receive other media reports of any kind
 25 concerning this case and shall not attempt to

1 conduct computer or other research concerning this
 2 case?
 3 **A. Yes.**
 4 **Q.** And the court order goes on to explain
 5 that because, as a testifying witness in this case,
 6 it is very important that your testimony reflects
 7 your own memory of events and is not influenced in
 8 any manner by other witnesses; correct?
 9 **A. Yes.**
 10 **Q.** And you understood that court order?
 11 **A. Yes.**
 12 **Q.** Now, after receiving that letter and that
 13 court order, you then contacted Kathy Durrer, who
 14 is here in court today; correct?
 15 **A. I contacted her?**
 16 **Q.** Yes. You emailed -- correction. You
 17 emailed Penny Cramer. Do you remember that?
 18 **A. Yes. I remember emailing them.**
 19 **Q.** And you emailed her on March 18, 2011;
 20 correct?
 21 **A. Yes.**
 22 **Q.** That was about 17 days after opening
 23 statements was given to this jury; right?
 24 **A. I don't know when opening statements**
 25 **start, so I'll take your word on that.**

1 **Q.** Thank you. I appreciate that. Let me
 2 confirm this is the email you gave her or sent her.
 3 **A. Yes.**
 4 **Q.** And in this email you told Penny
 5 Cramer -- did you understand that Penny Cramer was
 6 Ms. Polk's assistant?
 7 **A. Yes.**
 8 **Q.** You told Penny, as I told you on the
 9 phone, I have reviewed a few items of the trial on
 10 the Internet since I received the letter of
 11 March 11; correct?
 12 **A. Correct.**
 13 **Q.** You also said to her, I also listened to
 14 some information on line prior to receiving the
 15 letter. Correct?
 16 **A. Correct.**
 17 **Q.** And what you did was you went on line,
 18 and you listened to a 45-minute -- 45-minute
 19 audiotape of the Spiritual Warrior event that was
 20 played in court; correct?
 21 **A. That's correct.**
 22 **Q.** You found that on line?
 23 **A. Correct.**
 24 **Q.** You also went on line, contrary to the
 25 court order, and you listened to several minutes of

1 the video testimony of Jennifer Haley; correct?
 2 **A. Yes. Couple minutes. Yes.**
 3 **Q.** You also went on line and listened to
 4 several minutes of the videotaped testimony of
 5 Laura Tucker?
 6 **A. Correct.**
 7 **Q.** And Melissa Phillips?
 8 **A. Correct.**
 9 **Q.** All contrary to the Court's order?
 10 **A. Correct.**
 11 **Q.** You also indicated to Ms. Cramer in this
 12 email that you read various pages of information
 13 about witness testimony; correct?
 14 **A. I viewed various website pages of**
 15 **information. I didn't read various pages of**
 16 **information.**
 17 **Q.** This is you going to your computer and
 18 getting on the internet; right?
 19 **A. Yes.**
 20 **Q.** And you searched for these things?
 21 **A. Yes.**
 22 **Q.** It was a very conscious decision; right?
 23 **A. Yes.**
 24 **Q.** You also read opinions pages?
 25 **A. Yes.**

1 **Q.** And so these are people expressing
 2 opinions or editorials or comments about this
 3 trial?
 4 **A. Yes.**
 5 **Q.** And in some of them are very slanted
 6 against Mr. Ray; correct?
 7 **A. Yes.**
 8 **Q.** And you read all of that contrary to the
 9 Court's order?
 10 **A. If I remember correctly, I was sent a**
 11 **letter in January that said I was not going to be**
 12 **testifying. And I didn't receive this until the**
 13 **25th or the 28th. Most of that information I**
 14 **remember viewing during that time frame except for**
 15 **the couple of items that I had outlined in the**
 16 **email after receiving the letter before our**
 17 **conversation on the phone that you and I had in**
 18 **March.**
 19 **Q.** Sure. I understood. And you were trying
 20 to explain it to me then; correct?
 21 **A. Uh-huh.**
 22 **Q.** But in this email you did tell Penny, as
 23 I have told you on the phone, I have reviewed a few
 24 items of the trial on the internet since I received
 25 the letter on March 11?

1 **A. Correct.**
 2 **Q.** Meaning you, after receiving the state's
 3 letter and the Court's order, did go on line and
 4 view specific details of this trial?
 5 **A. And as we talked about on the phone, that**
 6 **statement in the email was incorrect.**
 7 **Q.** Okay. So what you wrote here is
 8 incorrect?
 9 **A. Yes.**
 10 **Q.** Although your language is precise?
 11 **A. In the email, yes.**
 12 **Q.** Okay. Now, you've also told Mr. Hughes
 13 that you have sued Mr. Ray; correct?
 14 **A. Yes.**
 15 **Q.** And that would also include his company,
 16 James Ray International?
 17 **A. Yes.**
 18 **Q.** That would also include Angel Valley?
 19 **A. Yes.**
 20 **Q.** And I understand that you, through
 21 Mr. Hughes's questions, did incur some expenses
 22 with ambulance and perhaps hospital bills?
 23 **A. Yes.**
 24 **Q.** But you did sue for more than recovery of
 25 expenses. You sued for additional damages;

1 correct?
 2 **A. I sued for what my attorney set me up**
 3 **for.**
 4 **Q.** Which was beyond the expenses you
 5 incurred?
 6 **A. Yes.**
 7 **Q.** At the time that you gave your police
 8 statement on October 14, 2009, the one that is
 9 recorded, you never mentioned to
 10 Detective Willingham the statement that you
 11 testified to today that you attributed to Megan
 12 Fredrickson; correct?
 13 **A. Correct.**
 14 **Q.** The first time you told anyone that you
 15 heard Megan Fredrickson make the statement, James,
 16 the people are your responsibility, is after you
 17 had gone on line; correct?
 18 **A. Not correct. Oh. Maybe the timing is**
 19 **correct. I'm sorry. If you're establishing the**
 20 **time line.**
 21 **Q.** I am.
 22 **A. Okay. Then I'm sure that that's what it**
 23 **is. Yes.**
 24 **Q.** Okay. Because the first time you told
 25 anyone on the state side was after March 18;

1 correct?
 2 **A. Correct.**
 3 **Q.** You emailed either Kathy Durrer or Penny
 4 Cramer -- let me show you another email to refresh
 5 your recollection as to the date. This is an email
 6 you sent to Penny Cramer on March 24; correct?
 7 **A. Okay. Yes.**
 8 **Q.** Is that right?
 9 **A. Yes.**
 10 **Q.** And in that email is when you said, Bill,
 11 meaning Mr. Hughes; correct?
 12 **A. Correct.**
 13 **Q.** Asked me to send you this note; right?
 14 **A. Yes.**
 15 **Q.** And there you included, while in the
 16 sweat lodge, I heard Megan Fredrickson say, James,
 17 these people are your responsibility; correct?
 18 **A. Yes.**
 19 **Q.** And that's the first time you've ever
 20 made that statement; is that right?
 21 **A. Yes.**
 22 **Q.** When Detective Willingham asked you if
 23 there was anything extremely important that you
 24 needed to tell her on October 14, you never
 25 mentioned that statement; is that correct?

1 **A. That's correct.**
 2 **Q.** After she gave you her name and her phone
 3 number, you never called her to tell her, hey, I
 4 remember this; correct?
 5 **A. That's correct.**
 6 **Q.** The first time you mentioned that
 7 statement was to Mr. Hughes; is that correct?
 8 **A. Yes.**
 9 **Q.** And that was after trial was already
 10 underway?
 11 **A. Actually, I believe it was Mr. Diskin**
 12 **first.**
 13 **Q.** Detective Diskin?
 14 **A. Uh-huh.**
 15 **Q.** Is that in the one hour interview that's
 16 not recorded?
 17 **A. Yes.**
 18 **Q.** Do you know whether or not a report was
 19 even generated?
 20 **A. I don't know.**
 21 **Q.** If I represented to you that no report
 22 was generated of that interview, would you have
 23 reason to dispute that?
 24 **A. If I -- I would not have reason to**
 25 **dispute that there was not a report created.**

1 Q. Okay. Because I understand the state did
2 provide you with copies of reports and interview
3 transcripts for you to review before you came here.
4 Correct?
5 A. **Correct. And that one there was no**
6 **transcript of our conversation.**
7 Q. No transcript, no report, no nothing;
8 right?
9 A. **Yes.**
10 Q. Okay. So the first time we know it's
11 been documented was in March, March 24, when you
12 emailed Penny Cramer pursuant to Mr. Hughes's
13 request; correct?
14 A. **Correct.**
15 Q. Now, let me ask you about this statement.
16 A. **Sure.**
17 Q. When do you believe you heard this
18 statement?
19 A. **I believe I heard it at the beginning of**
20 **the fifth round.**
21 Q. Beginning of the fifth round?
22 A. **Yes.**
23 Q. And could you tell me how -- what kind of
24 voice did Megan use when she said this?
25 A. **It sounded like a normal talking voice.**

1 Q. Not yelling; correct?
2 A. **No.**
3 Q. Conversational?
4 A. **Yes.**
5 Q. And she just said something to the effect
6 of, James, these people are your responsibility?
7 A. **Yes.**
8 Q. And what you heard before that was a
9 request for a number of rocks; is that right?
10 A. **Correct.**
11 Q. And that's what you heard?
12 A. **That's what I recall. Yes.**
13 Q. And as you sit here today, you're not
14 even sure, are you, whether or not that alleged
15 statement made by Megan was made even pursuant or
16 in response to the request for rocks?
17 A. **To the best of my recollection, it was**
18 **when he was calling for a large number of rocks --**
19 Q. Okay. I understand that.
20 A. **-- was when he made that statement.**
21 Q. To the best of your recollection now,
22 what you heard preceding the statement allegedly
23 made by Megan was a request for rocks; is that
24 right?
25 A. **Yes.**

1 Q. And was that by Mr. Ray?
2 A. **Yes.**
3 Q. Again, what kind of tone of voice did
4 Mr. Ray use?
5 A. **He used a ceremonious tone to request for**
6 **the rocks in the way that he was conducting every**
7 **round as part of the ceremony.**
8 Q. Okay. And after he made that request for
9 rocks, what happened?
10 A. **They brought the rocks in.**
11 Q. Okay. And then what happened next?
12 A. **Put them in the pit and dumped water on**
13 **them.**
14 Q. And then you heard the statement by
15 Megan; is that right?
16 A. **No. I believe I heard it before -- at**
17 **the request of asking for the stones was the**
18 **comment.**
19 Q. And, again, in a conversational tone; is
20 that right?
21 A. **Yes.**
22 Q. Not yelling.
23 MR. LI: May I approach, Your Honor?
24 MS. DO: Mr. Li is going to help me pin it up.
25 Q. Mr. Ronan, we just heard from a witness

1 named Dawn Gordon. Do you know who she is?
2 A. **Yes.**
3 Q. And when Ms. Gordon testified, she helped
4 explain to the jury the position of the
5 participants in her area.
6 A. **Okay.**
7 Q. You were sitting in her area; correct?
8 A. **I don't recall Dawn Gordon in my area.**
9 Q. All right. You had indicated to
10 Mr. Hughes using Exhibit 414 that you were sitting
11 directly opposite of the door; is that right?
12 A. **That's correct.**
13 Q. So we're going to call this the "north"
14 or the "12:00 o'clock area."
15 A. **Okay.**
16 Q. Do you see your initials here -- S.R.?
17 A. **I do.**
18 Q. To the left is T.W. Is that for Tess
19 Wong?
20 A. **Yes.**
21 Q. Is that accurate as you recall it?
22 A. **Yes.**
23 Q. To the right there is an M.R. for a Mark
24 Rock?
25 A. **Correct.**

1 Q. Is that consistent with your
2 recollection?
3 A. Yes.
4 Q. Do you remember if Dawn Gordon was to the
5 right of Mr. Rock?
6 A. **I don't remember.**
7 Q. Do you remember if Kirby Brown was to the
8 right of Mr. Rock?
9 A. **I do remember that she was to the --**
10 **that's to the left of Mr. Rock actually.**
11 Q. Okay. You're correct. To the left. And
12 also James Shore. Do you know where he was?
13 A. **James Shore was right next to me in front**
14 **of -- he was -- there was about a space between me,**
15 **and then there was James Shore. And we were**
16 **sitting on the inside. We started out on the**
17 **inside.**
18 Q. Okay. And where was Megan Fredrickson?
19 A. **She was sitting next to James.**
20 Q. James Ray?
21 A. **As far as I remember, yeah.**
22 Q. Okay. So on this diagram marked as 1080,
23 do you see a "JRI"?
24 A. **I do.**
25 Q. Is that consistent with your

1 recollection --
2 A. Yes.
3 Q. -- to where Mr. Ray was?
4 A. **Uh-huh. Yes.**
5 Q. Yes? And Megan Fredrickson would have
6 been to his left?
7 A. **His right.**
8 Q. His right?
9 A. **To his left was the door.**
10 Q. Okay.
11 A. **So to his right.**
12 Q. All right. Now, do you know the diameter
13 of the sweat lodge?
14 A. **I could guess, but I don't know the**
15 **actual diameter.**
16 Q. If I told you that the sheriff's
17 department actually measured the diameter of the
18 sweat lodge and it was 23 feet, would you have
19 reason to dispute that?
20 A. **No. I would not.**
21 Q. Would that be consistent with your
22 recollection?
23 A. Yes.
24 Q. Now, if I told you -- if I told you that
25 23 feet in this courtroom is right where I'm

1 standing behind counsel table to where you're
2 sitting on the witness stand, would that be
3 consistent with your recollection?
4 A. **Yeah.**
5 Q. Okay. So this is consistent with what
6 you remember? That's where you were sitting in the
7 north, and this is where the door would be;
8 correct?
9 A. Yes.
10 Q. And to the right of the door would be
11 Mr. Ray?
12 A. Yes.
13 Q. And to the right of Mr. Ray would be
14 Megan Fredrickson; correct?
15 A. **It was either Megan or his assistant. I**
16 **don't know where they were lined up.**
17 Q. Okay. And so it would be this distance
18 around the fifth round?
19 A. Yes.
20 Q. That you heard Megan Fredrickson;
21 correct?
22 A. Yes.
23 Q. In a conversational, not yelling voice,
24 James, the people are your responsibility?
25 A. Yes.

1 Q. Do you know how many people were between
2 you and Mr. Ray or Megan Fredrickson 23 feet apart?
3 A. **None.**
4 Q. I'm sorry?
5 A. **There were none. You're talking a direct**
6 **line of sight?**
7 Q. No. I mean going around the circle.
8 A. **I have no idea how many people filled in**
9 **the circle at the edge of the sweat lodge. No.**
10 Q. Okay. Your position around the
11 12:00 o'clock, going around to the 6:00 o'clock
12 position where Mr. Ray and Ms. Fredrickson were
13 seated, 23 feet apart, can you give us your best
14 estimate of how many people in the two rows between
15 those two points were there.
16 A. **By the time where Kirby, the K.B., is,**
17 **there was only a single line of people. There**
18 **was -- we finished the double line. Is that right?**
19 **No. That's not right. Yes. It was a double line.**
20 **Let me scratch that statement. I don't**
21 **know how many were between there. I have no idea.**
22 Q. Would you agree with me that there were
23 about 55 people who had started in the sweat lodge
24 ceremony?
25 A. **Yes. I would agree to that.**

1 Q. Okay. And that there were eight rounds?
 2 A. **I'm not sure how many rounds there were.**
 3 Q. Because at some point you believe you
 4 passed out; correct?
 5 A. **Right.**
 6 Q. So if there were 55 people in the sweat
 7 lodge, you would agree with me that at least at
 8 some point, and if everyone was spread out, at
 9 least half of them would have been on this side of
 10 the sweat lodge; correct?
 11 A. **You know, it would make sense it would be**
 12 **two-thirds and one-third.**
 13 Q. Okay. So it's your statement to this
 14 jury that about 17 months after the incident, you
 15 remembered a statement made by Megan Fredrickson in
 16 a conversational tone; is that right?
 17 A. **That's not correct. I remembered it the**
 18 **whole time. I just chose not to tell her.**
 19 Q. You chose not to tell who?
 20 A. **That's correct. The woman sheriff that I**
 21 **talked to, whatever her name was.**
 22 Q. On October 14?
 23 A. **Yes.**
 24 Q. You chose to omit information?
 25 A. **That's correct.**

1 Q. And you understood you were speaking to a
 2 sheriff?
 3 A. **Yes.**
 4 Q. Okay. Has anyone explained to you that
 5 that could be considered either obstruction of
 6 justice or a false police report?
 7 A. **No.**
 8 Q. Has anyone granted you immunity in this
 9 case?
 10 A. **No.**
 11 Q. Okay. As you sit here, the first time
 12 that statement was documented was while this trial
 13 was already underway, to your knowledge; correct?
 14 A. **I'd have to look at the dates to compare**
 15 **them, but I'll take your word for that. You have**
 16 **the time line better than I do.**
 17 Q. Thank you. I don't want you to take my
 18 word. I'll give you the email so you're sure.
 19 Again, it was March 24, 2011, that you emailed
 20 Penny to inform her of this statement; correct?
 21 A. **Yes. What was the date of the start of**
 22 **the trial?**
 23 Q. Opening statement was March 1st.
 24 A. **Okay.**
 25 Q. Now, what you heard precede that

1 statement was simply a call for rocks; is that
 2 right?
 3 A. **Yes.**
 4 Q. What you didn't hear that preceded that
 5 statement was any signs of distress from anyone; is
 6 that right?
 7 A. **I did not.**
 8 Q. In fact, you told Mr. Hughes that the
 9 entire time that you were in the sweat lodge
 10 ceremony, that you can recall, you never heard
 11 anyone say they were in distress; is that right?
 12 A. **I never heard an individual say they were**
 13 **in distress. That's correct.**
 14 Q. Okay. And since you were sitting in this
 15 area, the north area, you never heard any signs of
 16 distress come from Tess Wong; is that right?
 17 A. **The last I remember of Tess Wong is she**
 18 **was supporting a participant sitting on her right,**
 19 **and helping a participant through it.**
 20 Q. Okay. So the answer would be no? You
 21 never heard Tess say anything to you or around you
 22 that made you think she was in physical distress?
 23 A. **That's correct. That's correct.**
 24 Q. Did you ever hear anything come from
 25 Kirby Brown that made you think that she was in

1 physical distress?
 2 A. **I did not.**
 3 Q. In fact, what you heard Kirby Brown say
 4 was, we can do this. We can do this; correct?
 5 A. **Correct.**
 6 Q. And that was up to the fifth round at
 7 least because that's when you believe you passed
 8 out?
 9 A. **Yes.**
 10 Q. Is that correct?
 11 A. **Yes.**
 12 Q. And the jury has heard some testimony
 13 about this. Isn't it true that you heard Ms. Brown
 14 say it so loud and so persistent that you actually
 15 responded to her?
 16 A. **That's correct.**
 17 Q. And what did you say to her?
 18 A. **I think I told her to stop saying that.**
 19 **Just say it as, we did this. We did it this. We**
 20 **did this. Because we don't like to talk in the**
 21 **negative.**
 22 Q. Okay. So when she said, we can do this;
 23 we can do this, she said it with a firm voice;
 24 correct?
 25 A. **Yes.**

1 Q. And she was actually yelling it; right?
 2 A. Yes.
 3 Q. Enough that you could hear it; correct?
 4 A. Yes.
 5 Q. And other people around responded to her;
 6 correct?
 7 A. **I don't know other people responding to**
 8 **her.**
 9 Q. Okay. Did you ever hear Melissa Phillips
 10 respond to her?
 11 A. **I'm not aware of hearing Melissa Phillips**
 12 **respond to her.**
 13 Q. But you responded to her. And I don't
 14 know if these were your words as you remember. Did
 15 you tell her to shut up?
 16 A. **Yeah.**
 17 Q. Okay. Because it was so loud and so
 18 persistent; right?
 19 A. **Yeah. It was borderline annoying. Yes.**
 20 Q. Okay. Because it was interrupting your
 21 ceremony?
 22 A. **Yes.**
 23 Q. And so you told her to stop?
 24 A. **Yes.**
 25 Q. And you know at least up to the fifth

1 round that she was doing this; correct?
 2 A. **Yes.**
 3 Q. Now, I understand, and we'll talk about
 4 it a little bit more, at some point in the fifth
 5 round or after the fifth round, you lost
 6 consciousness, you believe?
 7 A. **Yes.**
 8 Q. So you wouldn't know whether or not
 9 Ms. Brown persisted after the fifth round with, we
 10 can could this, we can do this; correct?
 11 A. **That's correct.**
 12 Q. Now, James Shore, who is seated,
 13 according to Ms. Gordon's testimony, one, two,
 14 three, four, five people over to the left of you --
 15 did you ever hear anything come from Mr. Shore that
 16 indicated to you that he was in any kind of
 17 physical distress?
 18 A. **I did not.**
 19 Q. Nor did you hear from anyone in any other
 20 areas of the sweat lodge ceremony indicating to you
 21 they were in physical distress; correct?
 22 A. **Not that I can remember. No.**
 23 Q. You told Mr. Hughes that you had some
 24 symptoms after you completed the ceremony and
 25 returned home; is that correct?

1 A. **Yes.**
 2 Q. And home, I understand, is in California?
 3 A. **Yes.**
 4 Q. And when you returned home, you indicated
 5 to Mr. Hughes that you had post-traumatic stress
 6 disorder?
 7 A. **Yes.**
 8 Q. Is that correct?
 9 A. **Yes.**
 10 Q. And you also had depression?
 11 A. **Yes.**
 12 Q. And you said you had a urinary infection
 13 from the catheter?
 14 A. **Yes.**
 15 Q. Did you also tell the detective -- and I
 16 apologize for talking about -- it's personal, but
 17 I'm going to ask you. Did you tell the detective
 18 that you also had a prostate and sinus infection?
 19 A. **Sinus. Yes.**
 20 Q. Okay. And so those were the symptoms
 21 that you had several days after the sweat lodge
 22 ceremony; is that correct?
 23 A. **Yes. That I went to see a VA doctor for.**
 24 **Yes.**
 25 Q. Now, you had indicated that you were an

1 extreme guy and you choose to do certain high-risk
 2 activity because you get a high out of it?
 3 A. **Yes.**
 4 Q. Correct? You get a rush out of it?
 5 A. **Yes.**
 6 Q. Now, some people may not choose to do
 7 that. You would agree with me?
 8 A. **Yes.**
 9 Q. And but you chose to do these activities
 10 including the sweat lodge ceremony; correct?
 11 A. **Yes.**
 12 Q. So before going into the sweat lodge
 13 ceremony, Mr. Ray gave what's been called a
 14 "pregame briefing." Do you remember that?
 15 A. **Yes.**
 16 Q. And he actually told you and the other
 17 participants how extreme and how difficult this
 18 activity was going to be; correct?
 19 A. **Yes.**
 20 Q. He didn't pull any punches. He told you
 21 that it was going to be really, really hot?
 22 A. **Yes.**
 23 Q. That you're going to feel like your skin
 24 is melting off?
 25 A. **Yes.**

1 Q. You understood that to be a little bit of
 2 an exaggeration or a metaphor; correct?
 3 A. Yes.
 4 Q. And you understood from your friends that
 5 this was going to be an extreme challenge?
 6 A. Yes.
 7 Q. Correct? And your friends actually told
 8 you that people could end up on the floor -- and
 9 this is coming from your friends, not Mr. Ray.
 10 That people could end up on the floor; correct?
 11 A. Yes.
 12 Q. Your friends told you, not Mr. Ray, that
 13 people could end up passing out; correct?
 14 A. Yes.
 15 MR. HUGHES: Ms. Do, could you tell me the
 16 transcript page?
 17 MS. DO: Sure. Page 5, lines 23 to 26.
 18 Q. And your friends, not Mr. Ray, also told
 19 you it's like your opportunity to find God; is that
 20 correct?
 21 A. Yes.
 22 Q. And so knowing all these things, you
 23 expected this challenge to be extreme; is that
 24 right?
 25 A. Yes.

1 Q. Just like motorcycle riding?
 2 A. Yes.
 3 Q. Just like jumping out of an airplane?
 4 A. Yes.
 5 Q. And, Mr. Ronan, you chose to do this;
 6 correct?
 7 A. Yes.
 8 Q. You had free will to enter the sweat
 9 lodge?
 10 A. Yes.
 11 Q. You chose to go in?
 12 A. Yes.
 13 Q. Correct? And you could have left at any
 14 time you wanted to?
 15 A. Yes.
 16 Q. You could have left after round 1?
 17 A. Yes.
 18 Q. You could have left after round 2;
 19 correct?
 20 A. Yes.
 21 Q. Now, up to the point of round 5, that's
 22 when you feel or believe that you passed out; is
 23 that right?
 24 A. Yes.
 25 Q. Now, do you remember what happened right

1 before that occurred?
 2 A. I don't. It's fuzzy. No.
 3 Q. Okay. But it was -- but it was sudden,
 4 from what you remember; correct?
 5 A. What was sudden?
 6 Q. Up to round five you could hear Kirby
 7 Brown saying, we can do it. We can do it. Right?
 8 A. At some point in the sweat lodge she was
 9 saying it.
 10 Q. And you were responding to her?
 11 A. Yes.
 12 Q. And the next thing you know, you woke up
 13 outside the sweat lodge?
 14 A. Yes.
 15 Q. So when you passed out, you don't recall
 16 how it happened or how fast it happened; is that
 17 right?
 18 A. That's correct.
 19 Q. At some point you woke up outside the
 20 sweat lodge?
 21 A. That's correct.
 22 Q. The friends that told you about what to
 23 expect in a sweat lodge -- those were sweat lodge
 24 ceremonies that were put on by other organizations
 25 or by other folks; is that correct?

1 A. By Native Americans. Yes.
 2 Q. Okay. Native American sweat lodge
 3 ceremonies. That's what they told you to expect?
 4 A. Yes.
 5 Q. That people could end up passing out;
 6 correct?
 7 A. Yes.
 8 Q. That people do end up on the floor?
 9 A. Yes.
 10 Q. Those weren't JRI sweat lodges; is that
 11 correct?
 12 A. Those were not.
 13 Q. Back to the matter of your free choice,
 14 Mr. Ronan. You -- from what you could observe,
 15 people were coming in and out; correct?
 16 A. Yes.
 17 Q. From what you could observe, people had
 18 the free choice to come in and to leave whenever
 19 they wanted to; correct?
 20 A. Yes.
 21 Q. You never saw anyone stop someone at the
 22 door; correct?
 23 A. No.
 24 Q. You never heard Mr. Ray tell anyone to
 25 stop at the door; correct?

1 **A. Never heard him tell anyone to stop at**
2 **the door. That's correct.**

3 **Q.** In fact, you told the detective on
4 October 14, 2009, that what you believed happened
5 on this tragic day was that people exercising free
6 choices just didn't go out when they should have;
7 is that correct?

8 **A. Correct.**

9 **Q.** Thank you.

10 I have nothing further, Your Honor.

11 THE COURT: Thank you, Counsel.

12 Mr. Hughes.

13 MR. HUGHES: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. HUGHES:

16 **Q.** Mr. Ronan, you were asked some questions
17 about the interview you gave to Detective Parkison
18 as opposed to Detective Diskin. Did you tell
19 Detective Diskin about the comment that you
20 testified to today that you heard Megan make to the
21 defendant?

22 **A. Yes, I did.**

23 **Q.** And did you -- Ms. Do, I believe, read
24 some of the transcript to you from the interview
25 by -- I'm sorry. It was Detective Willingham. By

1 Detective Willingham. Is there a reason why you
2 did not tell Detective Willingham about the comment
3 that you have testified to?

4 **A. Yeah. I felt like I was protecting**
5 **James.**

6 **Q.** Why at that time -- do you remember when
7 that interview was?

8 **A. It was in October, I believe.**

9 **Q.** If the transcript says, October 14, 2009,
10 would you have any reason to disagree with that?

11 **A. I do not.**

12 **Q.** Why on October 14 were you trying to
13 protect the defendant?

14 **A. I was pretty foggy and hazy and didn't**
15 **know what was going to happen. And I was scared**
16 **for the event. I was scared for James. You know,**
17 **I didn't know what was going to take place. I**
18 **didn't know what I should say or shouldn't say. I**
19 **was just kind of in a fog and scared.**

20 **Q.** How many of Mr. Ray's events had you
21 attended by that point?

22 **A. Multiple events. Do you want a list of**
23 **them?**

24 **Q.** Well, do you have a ballpark figure of
25 how many you've attended?

1 **A. I've been in the room with James at least**
2 **15 times in 15 different events.**

3 **Q.** Do you know how much at that point you
4 had spent to attend events with Mr. Ray?

5 **A. I don't know how much I've spent to**
6 **attend events.**

7 **Q.** Did you ever seek to work for Mr. Ray or
8 ever volunteer for Mr. Ray?

9 **A. Majority of those 15 were volunteering**
10 **opportunities that I took advantage of versus paid.**
11 **And I also did work for him on one event looking to**
12 **seek employment with James at some level.**

13 **Q.** And what type of employment were you
14 seeking?

15 **A. I wanted to do some type of coaching**
16 **work. But that wasn't what I had done at the time.**

17 **Q.** At the time you gave this interview,
18 then, on October 14, were you an admirer of
19 Mr. Ray?

20 **A. Yes.**

21 **Q.** And when you're talking to the detective,
22 did you want to see Mr. Ray fall into any sort of
23 trouble?

24 **A. No.**

25 MS. DO: Objection. Leading.

1 THE COURT: Sustained.

2 **Q.** BY MR. HUGHES: What was it that you were
3 looking to see happen when you were talking to that
4 detective?

5 **A. I was just answering the questions. I**
6 **really didn't even want to talk to him.**

7 **Q.** How is it that you came to tell
8 Detective Diskin about this comment?

9 **A. Since some time had passed and I felt**
10 **like if James is going to be on trial for anything,**
11 **that my duty is to participate and tell the best of**
12 **what I can recall of my experience.**

13 **Q.** Ms. Do asked you about some of the
14 exposure that you had to the media. She asked if
15 you'd listened to a 40-some-minute audiotape of the
16 Spiritual Warrior event.

17 Do you remember being asked that?

18 **A. Yes.**

19 **Q.** Do you recall what portion of the
20 Spiritual Warrior event the audiotape covered?

21 **A. It was the preparation for going into the**
22 **sweat lodge.**

23 **Q.** Where did that preparation take place?

24 **A. It was in the conference room.**

25 **Q.** And I don't believe I asked you any

1 questions about that particular -- what you were
 2 told in that preparation. But did listening to
 3 that audiotape influence your testimony at all
 4 today?
 5 **A. No.**
 6 **Q.** And Ms. Do also indicated that you had
 7 listened to some brief portions of witnesses'
 8 testimony in this case?
 9 **A. Yes.**
 10 **Q.** And what were those witnesses again?
 11 **A. Jennifer Haley, Laura Tucker. I can't**
 12 **recall the other one.**
 13 **Q.** Did listening to those -- how much of
 14 those did you listen to?
 15 **A. Minutes. Not much at all.**
 16 **Q.** Did that influence your testimony today?
 17 **A. No.**
 18 **Q.** The emails that you mentioned -- did I
 19 request that you send one of those emails to the
 20 state?
 21 **A. Yes.**
 22 **Q.** And did I indicate that was going to be
 23 forwarded on to the defense?
 24 **A. No. You didn't indicate. I don't recall**
 25 **you indicating.**

1 **Q.** Do you recall why I asked you to send me
 2 the email which had the comment referred to in it?
 3 **A. Because you wanted to have it in writing.**
 4 **Q.** Okay. You were asked some questions
 5 about Kirby's comments or Kirby's statements inside
 6 the sweat lodge?
 7 **A. Yes.**
 8 **Q.** And can you explain your response. You
 9 said you corrected Kirby and said, we are doing it,
 10 or something like that?
 11 **A. Yeah. When you do the work that we do,**
 12 **we talk in the positive. And in my head it sounded**
 13 **like a negative, we can do this, like -- almost**
 14 **like we're not going to be able to do it. So the**
 15 **statement I said is, we will do it or, we did this.**
 16 **Q.** You indicated we talk in the positive.
 17 Is that something -- where did you come up -- where
 18 did you talk in the positive -- at what events?
 19 **A. Doing the James Ray seminars. It's a**
 20 **play on word, if you will, to redirect your**
 21 **positive thoughts to take it out of the negative**
 22 **context so it doesn't impact your energy.**
 23 **Q.** Had you ever been at events with Kirby in
 24 the past?
 25 **A. Yes, I have.**

1 **Q.** Do you have any idea how many events you
 2 might have attended with Kirby?
 3 **A. I believe three. One was as a volunteer.**
 4 **Q.** And were you a volunteer?
 5 **A. Yes.**
 6 **Q.** Ms. Do asked you a question, and you
 7 responded that I never heard an individual say they
 8 were in distress. Did you ever hear or see
 9 anything inside that led you to believe that people
 10 might be experiencing distress?
 11 **A. Other than Lou Caci, no.**
 12 **Q.** Did you hear Lou burn his arm?
 13 **A. Yes.**
 14 **Q.** And I think I had asked you about that.
 15 Ms. Do -- and I'm also almost done here. Ms. Do
 16 asked you some questions about whether anyone was
 17 stopped as they were leaving the sweat lodge. Did
 18 you ever hear the defendant talk to people as they
 19 left the sweat lodge?
 20 **A. Yes, I did.**
 21 **Q.** And was there any sort of a theme or
 22 commonality to what Mr. Ray was saying to those
 23 people as they left?
 24 **A. Yes, there was.**
 25 **Q.** Can you explain what that was.

1 **A. It was to -- the way I interpreted what**
 2 **he said or what he said?**
 3 **Q.** Well, the interpretation, I suppose,
 4 would depend on each person. So if you recall what
 5 it is you heard him say, we'll let the jury
 6 interpret it.
 7 **A. Right. He said, you're more than this.**
 8 **That's the main statement I remember him saying as**
 9 **everybody would leave. In a very loud voice.**
 10 **Q.** By the time Megan made this comment at
 11 the beginning of the fifth round, Ms. Do asked you
 12 assume there were 50-some people inside the lodge.
 13 Do you have any idea how many people were still
 14 inside the lodge in any location at the time of the
 15 comment by Ms. Fredrickson?
 16 **A. I do not know how many.**
 17 **Q.** Had you been seeing people leave?
 18 **A. Yes.**
 19 **Q.** Did you have any additional space or less
 20 space back in the area you were sitting in at that
 21 point?
 22 **A. Yes. The space opened up.**
 23 **Q.** Thank you, Mr. Ronan.
 24 THE COURT: Thank you, Counsel.
 25 Are there questions from the jury?

1 Okay.

2 Mr. Ronan, you will be excused. There is
3 a possibility you might be called back. So you
4 need to follow the rule of exclusion of witnesses.
5 It's been discussed thoroughly. And you have to
6 follow that just on the chance you might be called
7 back. Continue to follow that. Don't attempt to
8 talk to any other witness about the case or your
9 testimony until the trial is completely over. You
10 can talk to the lawyers, though, as long as other
11 witnesses aren't present.

12 Okay?

13 You are excused at least at this time.

14 THE WITNESS: Thank you.

15 THE COURT: Ms. Polk?

16 MS. POLK: Your Honor, there are three
17 exhibits, the admissibility of which is pending.
18 They are the client files for Liz Neuman, for James
19 Shore and for Kirby Brown. They are exhibit
20 numbers 1018, 1019, 1020. The state would move to
21 admit these client files between the three victims
22 and James Ray International.

23 THE COURT: Okay.

24 MR. LI: Your Honor, you can probably handle
25 this without troubling the jury or we can do it.

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1 We have proposed --

2 THE COURT: Let's have a very brief bench
3 conference just about the exhibits, if we could.
4 (Sidebar conference.)

5 MR. LI: We've provided redactions, Your
6 Honor.

7 THE COURT: Have you seen these, Ms. Polk?

8 MS. POLK: No, I haven't.

9 MR. LI: Essentially, it's just how much did
10 they pay. It deletes all of the sort of extra
11 information. The only relevant thing we believe is
12 how much they paid. We don't think any of it's
13 relevant.

14 THE COURT: You've made a record.

15 Ms. Polk.

16 MS. POLK: Your Honor, the state objects to
17 the redactions. The information reflects other
18 events the witnesses have attended. The Court has
19 been admitting that. And also the amounts they
20 have paid we would move for the admission.

21 MS. DO: Your Honor, may I ask a question? If
22 the state's about to rest, do we have to resolve
23 the exhibits before that occurs?

24 THE COURT: I'm going to talk about that. I'm
25 going to admit -- I'm going to admit at least the

1 name of the event and the amount actually paid.
2 That's what I'm going to admit. So if it's going
3 to come in to a different form, it's still going to
4 come in. If the state's going to rest, some form
5 of this is going to come in showing that
6 information.

7 MS. POLK: Can you indicate that to the jury
8 before I rest?

9 THE COURT: I'm trying to think. I don't want
10 to have any --

11 MS. DO: I don't think we'll object subject to
12 the Court's ruling.

13 THE COURT: Pardon me?

14 MS. DO: We will not object subject to the
15 Court's ruling now.

16 THE COURT: If I'm going to phrase it, say
17 that there are going to be some exhibits admitted
18 showing events attended by Kirby Brown, James Shore
19 and Liz Neuman and the amounts paid, and those
20 exhibits will be admitted. Something like that.
21 Okay.

22 Thank you.

23 (End of sidebar conference.)

24 THE COURT: Ladies and gentlemen, you've heard
25 Ms. Polk recite the numbers for three exhibits --

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1 1018, 1019, and 1020. There's still some work on
2 the exact form of those exhibits. But there will
3 be exhibits admitted that will show the JRI or
4 James Ray International events attended by Kirby
5 Brown, James Shore and Lizbeth Neuman in the
6 amounts that were paid to attend those events.
7 There will be exhibits coming to you. The exact
8 form just isn't finalized at this point. So I want
9 you to understand that.

10 Okay?

11 Is that correct, Counsel?

12 MS. POLK: It is, Your Honor. Thank you.

13 THE COURT: Mr. LI?

14 MR. LI: Yes, Your Honor.

15 THE COURT: Then, Ms. Polk.

16 MS. POLK: With that, Your Honor, the state
17 rests.

18 THE COURT: Then at this time, ladies and
19 gentlemen, the state has rested its case. And in
20 light of that, there is going to be a little bit
21 different scheduling. I'm going to ask that you
22 return for trial next Tuesday at 1:30. We're going
23 to have just one half day of trial. There are
24 various things to attend to.

25 So it's very important, of course, as

1 throughout the trial, that you follow the
2 admonition in all respects. Continue to do that.
3 And we will then go ahead and recess at
4 this time. So take care, again, over the extended
5 weekend that we have. And I will see you next
6 Tuesday at 1:30. Be assembled at that time.

7 I'm going to ask that the parties remain,
8 please.

9 (Proceedings continued outside presence
10 of jury.)

11 THE COURT: Thank you. Be seated. The jury
12 has left the courtroom. And just to clear up the
13 scheduling to make sure it's firm. The
14 anticipation, then, will be argument at
15 10:00 o'clock on Tuesday morning; correct?

16 MR. LI: Correct, Your Honor.

17 MS. POLK: Yes, Your Honor.

18 THE COURT: And does defense anticipate filing
19 something this afternoon?

20 MR. KELLY: Judge, I believe the defense is
21 moving for a Rule 20. And that is -- today it will
22 be prepared in writing and filed with the Court and
23 argued Tuesday.

24 THE COURT: So will a copy be available for me
25 and Ms. Polk here momentarily?

1 MR. LI: Yes, Your Honor. Yes.

2 THE COURT: Okay.

3 MR. LI: Part of it is we are still
4 incorporating information adduced at trial today.
5 I think it will -- you will have it certainly
6 today.

7 THE COURT: All right. Anything else, then?

8 MS. POLK: Your Honor, just briefly. The
9 defense has provided to us some names of witnesses.
10 We would just ask that they let us know who they
11 intend to call Tuesday afternoon and Wednesday.

12 THE COURT: Mr. Li.

13 MR. LI: Your Honor, if it's necessary for the
14 defense to put on a case, we will certainly let the
15 state know in a timely manner, and the order.

16 THE COURT: But in terms of a timely manner?

17 MR. LI: I'm sorry, Your Honor. We've already
18 sent them an email with some witnesses. And we
19 will confirm that those are the witnesses that will
20 be scheduled for that particular day.

21 THE COURT: Ms. Polk?

22 MS. POLK: Your Honor, I'm asking that today
23 that we be notified who will be called on Tuesday
24 and who will be called on Wednesday.

25 MR. LI: Your Honor, we have sat here -- we

1 will do our best. And we have already sent them an
2 email with the names of the witnesses. And so we
3 think we've complied with that request.

4 We have sat her for four months with the
5 state shuffling witnesses on us on a fairly routine
6 basis. We have -- we will do our absolute best to
7 notify them exactly that the time -- most timely
8 manner possible. And that's --

9 THE COURT: And how many witnesses do you have
10 on the list right now that you've been provided --
11 or you have provided?

12 MR. LI: We have listed -- well, Your Honor --

13 THE COURT: I'm just trying to get an idea
14 what Ms. Polk has right now in terms of how many
15 people --

16 MR. LI: She knows of at least two witnesses
17 for sure -- three witnesses -- well, witnesses for
18 sure. I need to consult with counsel.

19 THE COURT: Okay. Because I want to know the
20 best you can. And I heard from the state they did
21 the best they could about letting the other side
22 know about who may be up.

23 MR. LI: Your Honor, if we may approach?

24 THE COURT: Okay.

25 (Sidebar conference.)

1 THE COURT: Okay. Mr. Li, as you know, I made
2 a very clear record this is all tentative. I mean,
3 there is a Rule 20 pending. I'm fully aware of
4 that.

5 MR. LI: I understand. We appreciate that.

6 THE COURT: We need to look at eventualities.

7 MR. LI: I want to say this at sidebar. We
8 have listed Dr. Ian Paul, Dawn Sy, Detective Ross
9 Diskin. And Mr. Ray may testify. And we don't
10 want to talk about Mr. Ray testifying with the
11 press because we don't want it being reported. But
12 this is what we have provided.

13 THE COURT: I just -- the best you can, I'd
14 like the state to know who is up. Especially --
15 can be quite a difference between Dr. Paul and Dawn
16 Sy. There is a major difference in how people, I
17 would think --

18 MR. LI: Yes.

19 THE COURT: -- be preparing for those. I
20 understand, Mr. Li, you have some concerns in
21 knowing who is going to be up. And I'm just asking
22 people work in good faith.

23 MR. LI: And we will. We will absolutely do
24 that, Your Honor.

25 THE COURT: Okay.

1 MR. LI: Thank you.

2 THE COURT: Thank you very much.

3 (End of sidebar conference.)

4 We'll recess unless there is anything
5 else you need on the record.

6 MS. POLK: Your Honor, there is one more
7 issue, which is from time to time the Court has
8 asked that the parties provide exhibits,
9 specifically when audio portions were played. And
10 I had talked to the clerk during one of the breaks.
11 And it does not appear that that's been done.

12 I just want to make sure that the record
13 that we have is clear. And I don't know what the
14 best process is to identify the various times when
15 that was asked. But I know that the clerk had said
16 there are minute entries reflecting when that was
17 asked.

18 MR. LI: We're on it, Your Honor.

19 THE COURT: 600 and 680 stick in my mind.

20 MR. LI: We are in the process of making those
21 clips for the record.

22 There is one other evidentiary issue.
23 I'm probably the worst person to handle this one.
24 But I think Exhibit 1017 was a number of medical
25 records. And I'll turn it over to Ms. Do.

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1 MS. DO: That was the CD that contained
2 materials that were provided to Dr. Dickson. And,
3 as the Court recalls, there was a miscommunication
4 or misunderstanding between Mr. Hughes and myself.

5 With the Court's permission, we would
6 need to get a copy of 1017 in order to redact so
7 that all that remains on the CD are the medical
8 records.

9 MR. HUGHES: Your Honor, I think the Court had
10 ordered the defense to provide that redacted copy.
11 I don't have any problem if they make the copy of
12 it in here, just do that. And then the Court
13 wanted a limiting instruction so the jury would
14 know -- would not be confused that that was the
15 only thing that Dr. Dickson had been provided.

16 But as far as the mechanics of making it,
17 I have no objection to however the defense goes
18 about making the CD.

19 THE COURT: Just have to have arrangements so
20 the clerk's present and it can be done in that
21 fashion. The limiting instruction could be
22 developed too.

23 MR. HUGHES: Thank you.

24 MS. POLK: If I can go back to the issue I had
25 raised. It's not just the interviews that were

1 played yesterday.

2 THE COURT: I know.

3 MS. POLK: It's been throughout the
4 proceeding. I think there was a time -- and maybe
5 the clerk can help me with this one. There was a
6 time when the defense had indicated they would
7 prepare a list. I don't know if that's been done
8 or not.

9 MS. DO: Your Honor, we'll have a list, and
10 we'll have the actual CD containing all the clips
11 that we've played throughout the trial by Tuesday
12 afternoon.

13 THE COURT: I just remember 600 and 680. I
14 thought that we were keeping up with it as it
15 progressed. You're saying -- okay. In any event,
16 that's just an important thing to do to complete
17 the record.

18 MS. DO: We understand.

19 THE COURT: Thank you. We'll be in recess.

20 (The proceedings concluded.)
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22
23
24
25

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1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE
3

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 9th day of June, 2011.
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MINA G. HUNT, AZ CR No. 50619
CA CSR No. 8335

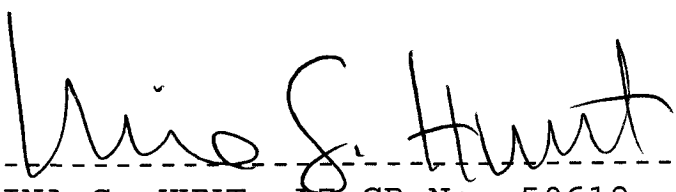
1 STATE OF ARIZONA)
2) ss: REPORTER'S CERTIFICATE
3 COUNTY OF YAVAPAI)
4

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17 In witness whereof, I have affixed my
18 signature this 9th day of June, 2011.
19
20

21
22 
23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335